PAPERS

RELATING TO

THE PASSING OF ACT X. OF 1859

(AN ACT TO AMEND THE LAW RELATING TO THE RECOVERY OF RENT IN THE PRESIDENCY OF FORT WILLIAM IN BENGAL.)

VOLUME I.

Compiled in the Revenue and Agricultural Department.

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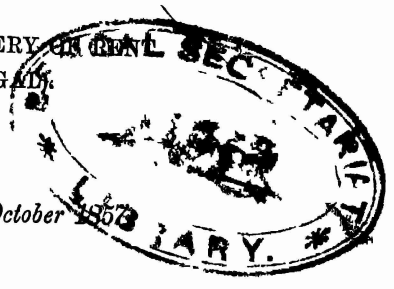
PAPERS

RELATING TO

THE PASSING OF ACT X OF 1859

(AN ACT TO AMEND THE LAW RELATING TO THE RECOVERY OF RENT IN THE PRESIDENCY OF FORT WILLIAM IN BENGAL).



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MR. CURRIE.

MR. CURRIE moved the first reading of a Bill "to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal." The necessity, he said, for the revision and consolidation of the distraint and summary suit laws, which comprised the law for the recovery of rents, had been long and generally acknowledged. The basis of the existing law was to be found in the Regulations of 1793 and 1799; but, in the course of sixty years, very considerable alterations, additions, modifications, and supersessions had taken place; so that it was difficult for any person not conversant with the subject to ascertain what the law in force really was.

Originally, the summary cognizance of claims to arrears of rent and of complaints of illegal distraint was vested in the Civil Courts. About twenty-six years ago, it was transferred to the Collectors. But no rules for conducting the summary enquiry either before the Civil Courts or before the Collectors had ever been laid down. Sensible of the imperfect and confused state of the law, the Board of Revenue had undertaken the revision and consolidation of the Regulations and Acts bearing on the subject; and two comprehensive drafts had been prepared, one by Mr. Ricketts, and the other by Mr. Stainforth. Neither of those drafts, however, had been adopted by the Board of Revenue. He had carefully considered both, and found them to be, for the most part, compendiums of the existing law, the variations from it being principally in matters of detail, although the draft by Mr. Stainforth especially contained several important modifications of the practice with respect to distraint. It was thought, however, that something more than this was requisite—that, in furnishing landholders with powers to compel the payment of rents, on which their ability to pay the Government revenue depended, sufficient regard had not been had to the protection of tenants from the abuse of those powers. The consequence of this omission had been a large amount of oppression inflicted by the more wealthy and powerful, upon the poorer classes.

Several remedies had been suggested for this evil. Amongst them, the giving of enlarged powers to Collectors for the summary adjudication of all cases of complaint in connection with demands of rent preferred by tenants and cultivators. There was a law—section XX, Regulation VII of 1822—by which such powers might be specially conferred on particular Collectors. In the North-Western Provinces, he believed, they had been given, generally, to all Collectors; but in the provinces under the Bengal Government, this had not been the case. Such power had been given to Collectors in these Provinces with respect to only one particular class of cases, and that had been given only within the last year or two. In the Code of Civil Procedure which had been framed by Messrs. Mills and Harrington, it had been recommended that Collectors generally should have the power of adjudicating all cases of the kind

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mentioned in section XX, Regulation VII of 1822, and that this jurisdiction should be exercised by them in accordance with the procedure proposed for the Small Cause Courts. In this general principle he entirely concurred; and he had adopted it, accordingly, in this Bill.

It had been a question whether this jurisdiction might not more appropriately be given to Moonsiffs, especially on the ground that the Courts of the Moonsiffs had a local jurisdiction of limited extent. He thought it absolutely necessary for the efficient working of any measure of relief designed for the poorer classes that the means of redress should be brought near to their doors; and, were the only Revenue Court in a district now, as formerly, the office of the Collector at the sudder station, he should have thought the argument in favour of giving the jurisdiction in question to Moonsiffs very strong indeed. But the Collectorates in the Lower Provinces had, within the last few years, been very generally broken up into sub-divisions, and the constitution of new sub-divisions was still in progress; so that in a few years, it might be hoped, the number of Deputy Collectors located in the interior would hardly be less than the number of Moonsiffs.

With the permission of the Council, he would read the remarks made by Messrs. Mills and Harrington on the subject:—

"We are of opinion that every Deputy Magistrate and Deputy Collector located in the mofussil should be specially empowered to try summary suits. To the ryot who has been illegally ejected from his lands, or who has paid an unjust demand to avoid the sale of his property, this means of obtaining prompt redress will be an inestimable advantage; to the landlord desirous only that justice should be done between him and his ryot, it cannot prove otherwise than beneficial; and there can be no doubt that it will greatly conduce to the general good government of the district.

"It has been recommended by many officers that the administration of the law relating to summary suits for arrears or exaction of rent, or on account of illegal distraint and ousters from holdings, should be transferred from the Collectors to the Moonsiffs. The vicinity of the Moonsiff's Court to the residence of the cultivator would, as already observed, be a great advantage to the latter; but we think that it is desirable for many reasons to employ the officers of the Revenue Department in at least the primary administration of the law.

"The Collector is obviously the most appropriate instrument for the purpose. He is best acquainted with the fiscal state of the district, with the tenures prevailing in it, and with the character of the landlords; and he is the person most deeply interested in promoting this branch of the administration of civil justice. Questions between the landlord and the Government respecting the collection and assessment of the public revenue may properly be subjected to the cognizance of the established Courts of Judicature, as the Collector may be supposed to be interested in the result; but this is not the case in disputes between the landlord and tenant.

"So far from thinking it advisable to make such a transfer, we have considered whether the cognizance of all controversies between landlord and tenant might not advantageously be left altogether to the Revenue Officers without any appeal to the Civil Court, as is done in the Punjab; but, adverting to the present organisation of the Civil Service, and to the uncovenanted agency now available, it would not, we think, be possible to carry out this scheme."

In these views, he (Mr. Currie) generally concurred. He thought that such cases as complaints or non-delivery of pottahs, and indeed almost all cases which could arise between landlord and tenant, were best left to the primary cognizance of the Revenue Officers.

But in enlarging the jurisdiction of the Collectors for the trial of these cases, he had thought it necessary to re-enact, in a clear and distinct form, those provisions of the existing law relative to the respective rights of landlord and tenant with which they would principally have to deal in the discharge of this duty.

The Bill, therefore, commenced with declaring that all ryots of every grade were entitled to receive pottahs from the landholder declaring the amounts of rent payable by them, and also to have that rent adjusted according to certain fixed rules.

It also declared that all resident ryots or cultivators had a right of occupancy in the lands held or cultivated by them, so long as they paid the rents legally demandable from them.

These sections contained nothing more than what had been the law since the time of the Permanent Settlement; but under that law the only remedy open to the ryot was by a regular suit in the Civil Court; and to refer a poor cultivator to a regular suit, against his landlord, under the present practice of the Courts, was almost tantamount to refusing him any remedy at all.

As the ryot was to have the right of demanding a pottah, it was but just that the landholder should have the right of demanding a kabooliut or written engagement for the payment of his rent by the tenant. By the present law, a condition to the exercise of the powers of distraint or summary suit was that the landlord should have tendered pottahs to his ryots; and this tender he might make by affixing a general notification in his cutcherry intimating that the pottahs were ready for delivery. This law, which was intended for the protection of the ryot, he (Mr. Currie) believed, had, in practice, been altogether a dead letter. He had provided that, when the landholder tendered a pottah to a ryot, and the ryot refused to receive it, he might sue him for a kabooliut, and that the possession of a kabooliut, or of a decree adjudging the delivery of one, should be necessary to authorize a landlord to exercise the right of distraint.

The Bill further provided penalties for exactions in excess of rent payable, and withholding receipts for rent paid; and also for extortion of rent by imprisonment or other duress.

It also took away the power now possessed by landholders of compelling the attendance of their ryots for adjusting rents, or for any other purpose. This power had been very generally complained of as being used as a means of oppression; and it seemed to him to be inconsistent with the general principles of our administration.

Then followed rules according to which the landholder was to proceed when he wished to raise his rents, and then a provision allowing ryots to resign their lands when unable or unwilling to hold them any longer. Many Bengal officers had urged that a provision like this was very much required. From the want of it, an unfortunate ryot might be literally bound to the soil, if it should be the interest of the landholder so to bind him.

These were the principal provisions of the first part of the Bill.

There were rules for the ejectment of ryots and the cancelment of leases for arrears of rent, taken from the existing law; but he had made them subject to the proviso that there should be no such ejectment or cancelment otherwise than in execution of a decree or order under the provisions of the Act.

The Bill gave to revenue officers exclusively the primary cognizance of all cases of the nature he had described.

It also gave them power to reinstate tenants illegally ousted, and to render assistance to landholders to eject tenants or agents whose tenancies or agencies had determined, or to enforce any attachment or ejectment expressly authorized by law. This provided for all that was contemplated by the Ouster Bill, which had been referred to a Select Committee, but upon which no report had been made.

He did not think it necessary to detain the Council with any detailed explanation of that part of the Bill which contained the rules of procedure. They had been taken principally from the Small Cause Courts Bill upon which the Council had bestowed so much pains, with some slight modifications adopted for the most part from the Civil Code prepared by Her Majesty's Commissioners.

By the present law, when a summary suit for arrears of rent was instituted, the only process against the defaulter was a warrant of arrest. There could be no doubt that the power to obtain such a warrant had been abused for purposes of oppression. He was not prepared to say that this power should be altogether and absolutely withdrawn; but he did think that it should be restricted as much as possible; and he had, accordingly, provided in the Bill that warrants of arrest should be issued only where special necessity for such process was shown, and where the party applying made out a good *primâ facie* cause of action.

By the present law, refusal by a landholder to give a pottah to a tenant was punishable by a fine. It appeared to him that the Collector ought to be authorized to order a delivery of the pottah; and that, if the landholder refused to obey the order, the Collector should himself grant a pottah, which should have the same effect as a pottah given by the landholder.

The Bill also provided that if, on the trial of a suit for the delivery of the pottah, the parties did not agree as to the term for which the pottah was to run, the Collector should have power, within certain limits, to fix such term as under the circumstances of the case he should think proper.

Proceedings of the Legislative Council, dated the 10th October 1857.

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The provisions respecting the execution of decrees were taken partly from the Small Cause Courts Bill and partly from the Code of Civil Procedure.

He had not been able to introduce any provisions for regulating the sale of under-tenures in satisfaction of decrees for rent, because the question of the degree of protection which should be afforded to tenures of the second and lower grades had been referred to the Select Committee on the Sale Law Bill. It appeared to him better, however, that the procedure to be adopted on the sale of such tenures, whether in satisfaction of a decree for rent, or for any other demand, might be more conveniently provided by a separate enactment.

The next part of the Bill related to distraint. The Council had, probably, seen a pamphlet called "*Punjum* Outrages"—*Punjum*, or the fifth, meaning Regulation V of 1812, which was the law of distraint and replevin. It could not be denied that the existing law of distraint bore very hard upon the tenant. Unless, within five days from the date of attachment, the tenant gave security that he would bring a suit to contest the demand against him within fifteen days, his property was liable to be sold; and as there was no intervention of any public officer between the attachment and the sale, it not unfrequently happened that the first intimation which the tenant received of the distraint was on the very day of sale.

Then, the whole business of sale and of taking security to stay the sale was in the hands of certain commissioners, who were paid by a small commission on the proceeds of the property sold. The average receipts of these commissioners were, in some districts, not more than one rupee per month, and in none were they more than ten rupees per month. It was quite unnecessary to say that agency so remunerated could not be depended upon. In any reform of the system, the first thing to be provided for was the transfer of this duty from the commissioner now employed to some trustworthy officer; and it appeared to him indispensable to securing trustworthiness that the officer should be paid by a fixed salary, and not by a small and precarious commission. In the North-Western Provinces, he believed that the sales were entrusted to officers in the tehsildar's establishment. In these Provinces, he did not know of any class of public servants more fit to be employed for the purpose than the Civil Court Ameens appointed under an Act of last year. He had, accordingly, provided by the Bill that the duty should be entrusted to the Civil Court Ameens or to such other public officers as the Lieutenant-Governor should appoint for the purpose.

The next requisite was that the person whose property was distrained should receive due notice of the distraint. He had provided for this by clause which required that the distrainer should make a written application to the Civil Court Ameen for the sale of the property distrained, and that the Civil Court Ameen should transmit a copy of such application to the Collector, and should issue a notice to the holder of the property, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice. He had made no provision as to finding security for the institution of such suit. He thought it was better that that part of the existing practice should be discontinued. The holder might, if he pleased, give security, and obtain the release of his property; otherwise, the property would continue under distraint until the case was decided.

These were the principal changes made by the Bill, in respect to Procedure; and he thought they would have the effect of doing away with most of the objections which were felt to the existing law. But he would also greatly abridge the power of distraint. At present, a tenant of any grade—the proprietor of a putni taluk, for instance—might have his household goods distrained if he happened to be in arrear. For this, there was no possible necessity. He had restricted the liability to distraint to the case of actual cultivators, and the subject of distraint to the produce of the land in respect of which the arrear was due.

The only remaining portion of the Bill to which he need advert, was that which related to appeals. He thought that, when the matter in dispute was merely a question of the payment of a certain sum either as damages or as arrears of rent, and the amount did not exceed fifty rupees, no appeal at all should be allowed. But when cases of this kind were decided by Deputy Col-

lectors, he would allow the Collector to revise and set aside the judgm
his deputy upon grounds of substantial defect of procedure involving de
justice. Cases of this kind *would*, for the most part, be decided by I
Collectors; and, therefore, would generally be open to this revision. When
such cases should be decided by Collectors who were always officers of stand
and experience, he did not think that any such revision would be necessar
But he had provided, as in the Small Cause Courts Bill, for the re-hearing of
case, whether it had been tried by a Collector or by a Deputy Collector, when
ever new evidence or matter was discovered material to the issue.

In other cases which might involve any more important interest than a simple question of the payment of money, or the payment of a larger sum than fifty rupees, an appeal must, he thought, be allowed; and he had provided that such appeal should lie to the Zillah Judge. In this, he had followed the suggestion of Messrs. Mills and Harrington.

There was nothing more in the Bill which appeared to him to call for remark. He thought it proper, however, to observe that the Bill, as drawn, extended to the North-Western Provinces as well as to Bengal. It had been prepared, and actually in print, before the outbreak of the lamentable disturbances which had involved in anarchy and disorder so large a portion of those Provinces. The introduction of the Bill had been delayed for some months in consequence of that outbreak. But the Bill had been designed primarily and chiefly for the correction of abuses which, under the operation of the existing law, had sprung up in Bengal, and the correction of which was loudly called for. It did not appear to him necessary to defer any longer remedial measures in this division of the Presidency because of the present unsettled condition of the other. If it should be thought proper, the operation of the Bill might be limited in the first instance to Bengal, and extended to the North-Western Provinces at some future period, with any modifications which the circumstances of those Provinces might be thought to require.

In conclusion, he begged to apologise to the Council for the length of time he had occupied in explaining the objects and tenor of his Bill, and to thank them for the patience with which they had listened to him.

The Bill was read a first time.

A Bill to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.

Bill to amend Law relating t the recovery o rent.

WHEREAS it is expedient to re-enact with certain modifications the provisions of the existing law relative to the rights of ryots with respect to the delivery of pottahs and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same; to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears; and to amend the law relating to distraint; It is enacted as follows:—

Preamble.

I. The following Regulations and Acts and portions of Regulations and Acts are hereby repealed, except in so far as they repeal any other Regulation or Act, and except as to proceedings commenced before the date of this Act coming into force, namely:—

Laws repealed.

Regulation XVII of 1793.
So much of Regulation IV, 1794, as is still in force.
Regulation XXXV, 1795.
Regulation XLV, 1795.
Sections IX and X, Regulation LI, 1795.
Sections I to XX of Regulation VII, 1799.
Sections I to XX of Regulation V, 1800.
Regulation XXVIII, 1803.
Sections IX and X, Regulation XXX, 1803.

ection IV of Regulation II, 1805.
ection XIX of Regulation VIII, 1805.
ections V to XXIII of Regulation V, 1812.
Sections XV and XVI of Regulation XIX, 1817.
Sections XVIII and XIX of Regulation VIII, 1819.
Section IV of Regulation II, 1821.
Section XXII, and so much of section XX and the following sections of Regulation VII, 1822, as apply to suits for rent, to complaints of excessive demand or undue exaction of rent, or of the non-delivery of pottahs or receipts, to suits against agents for money or accounts, or to any other suits or complaints arising out of disputes between landholders or farmers and their under-tenants respecting the rent and occupancy of land.
Regulation XIV, 1824.
Regulation VIII, 1831.
Act I of 1839.
Act X of 1846.
Act VIII of 1848.
Sections XIV and XV, Regulation IX, 1833, so far as the same are applicable to the territories under the Government of the Deputy Governor of Bengal, are also repealed.

Such parts of Regulation VIII, 1793, and Regulation XXX, 1803, as relate to the adjudication of penalties for the refusal of pottahs and receipts for rent and for the exaction of any sums as abwab or in excess of the amount specified in any engagements for the payment of rent, are declared subject to the following modifications.

Person liable to pay rent is entitled to a pottah.

II. Every ryot and cultivator of land is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable, a pottah specifying the annual amount of such rent, and the instalments in which it is to be paid, or, in cases in which the rent is payable in kind, the proportion of the produce to be delivered.

Pottahs of hereditary ryots and of other cultivators.

III. Hereditary ryots holding lands at fixed rates of rent are entitled to receive pottahs at those rates. All other ryots and cultivators of land are entitled to receive pottahs according to the rates of rent for the time being established in the pergunnah in which the land is situate, for land of the same description and quality, or if there be no known and recognised pergunnah rates, according to the customary rates payable for land of a similar description in the places adjacent. The above rules are applicable not only to the first grant of pottahs, but also to the renewal (where right of renewal exists) of pottahs which may expire or which may become cancelled in consequence of the sale of the tenure or estate in which the land is situate for arrears of rent or revenue.

Right of occupancy of resident ryot or cultivator.

IV. Every resident ryot and cultivator has a right of occupancy in the land held or cultivated by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khamar, neejjote or seer land belonging to the proprietor of the estate or tenure and leased for a term or year by year to a resident cultivator, nor (as respects the actual cultivator) to lands sublet to a resident cultivator by a ryot having a right of occupancy.

Saving of terms of written contracts.

V. Nothing contained in either of the two last preceding sections shall be held to affect the terms of any written contract for the payment of specific rates of rent, nor of any contract entered into between a landholder and a resident ryot or cultivator for the clearing and cultivation of waste land, or for the cultivation of land not previously in the occupation of such ryot or cultivator, when by such contract conditions of occupancy have been agreed on between the parties, or a right of re-entry has been expressly reserved to the landholder. Resident ryots cultivating land not previously in their occupancy without a pottah or other instrument in writing from the proprietor of the estate or tenure in which the land is situate, shall not acquire a right of occupancy in such land until rent shall have been paid by them for the same to the said proprietor for a period of [illegible] years.

Person granting pottah entitled a counterpart engagement.

VI. Every person who grants a pottah is entitled to receive from the person to whom the pottah is granted a kabooliut or counterpart engagement in conformity with the rms of the pottah. The tender of a pottah to any ryot or cultivator at the ate of rent which such ryot or cultivator is liable to pay shall be held to entitle the person to whom the rent is payable to receive a kabooliut from such yot or cultivator.

Exactions in excess of rent or ccipt withheld.

VII. Every under-tenant, ryot, or cultivator, from whom any sum is exacted in excess of the rent specified in his pottah, whether as abwab or under any other pretext, and very under-tenant, ryot, or cultivator from whom a receipt is withheld for any m of money paid by him as rent, shall be entitled to recover from the person receiving such rent double the amount so exacted or paid. Receipts for rent shall specify the periods n account of which the rent is acknowledged to have been paid; and any efusal to make such specification shall be held to be a withholding of a receipt.

Form of receipt.

Landholder not to compel the endance of tenant for adjustment rent or for any other purpose.

VIII. The power heretofore vested in zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose is withdrawn, and all such persons are prohibited om adopting any measures for enforcing payment of the rents due to them other than are authorized by the provisions of this Act. But nothing in this Act shall be held to restrict right of landholders to measure any land in respect of which rent is paid to them, provided that such measurement is not at variance with the conditions under which the land eld by the persons by whom such rent is paid.

Payment of rent to be enforced ler this Act.

ght to measure land reserved.

mages for extorting payment of by duress.

IX. If payment of rent, whether the same be legally due or not, is extorted from any under-tenant, ryot, or cultivator by illegal confinement or other duress, such under-tenant, ot, or cultivator shall be entitled to recover three times the amount so extorted in addition to any penalty to which the person practising such extortion y be subject by law.

nhancement of rent of cultivator, holding without or after expiry, of written engagement.

X. No under-tenant, ryot, or cultivator who holds or cultivates land without any written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired, or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or ate in which the land held or cultivated by him is situate, and has not been newed, shall be liable to pay any higher rent for such land than the rent payle for the previous year, unless a written notice shall have been served on such der-tenant, ryot, or cultivator in or before the month of Jait specifying the t to which he will be subject for the ensuing Fusli or for the current Bengal ar. Such notice shall be served by order of the Collector on the application hich may be on plain paper) of the person to whom the rent is payable, and practicable, be served personally on the under-tenant, ryot, or culti- if he shall abscond or conceal himself so that it cannot be served on him, it shall be affixed at his usual place of residence, or if he ce of residence, in the district in which the land is situate; the of such notice shall be by affixing it at the mâl cutcherry of other conspicuous place thereon, or at the village chowri or e other conspicuous place in the village.

g enhancement

under-tenant, ryot, or cultivator, on whom such notice as aforesaid has been served, may contest his liability to pay the enhanced rent demanded of him, either by excessive demand of rent as hereinafter provided, or in answer to erred against him for recovery of arrears of the enhanced rent. ultivator shall, under any circumstances, be liable to any enhance- t in excess of the rates specified in section III of this Act.

t of land by ryot r notice given.

Any ryot or cultivator who desires to relinquish the lands held or cultivated by him, shall be at liberty to do so, provided he gives notice of his intention in writing of ntitled to the rent of the lands in or before the month of Jait of

to amend the
relating to
covery of

the Bengal year in which, or of the Fusli year preceding which, the relinquish
ment is to have effect. If he fail to give such notice, and the lands are not le
to any other person, he shall continue liable for the rent of the lands. If th
person entitled to the rent of the land refuse to receive any such notice and
sign a receipt for the same, it shall be served upon him by the Collector o
application for such service being made by the ryot or cultivator within th
time above mentioned.

What to be deemed an arrear of rent under this Act.

XIII. Any instalment of rent which is not paid on or before the day whe
the same is payable according to the pottah o
engagement, or, if there be no written specificatio
of the time of payment, at or before the time when such instalment is payabl
according to established usage, shall be held to be an arrear of rent under th
Act.

Liability of ryot or cultivator to be ejected for arrear due.

XIV. When an arrear of rent remains due from any ryot or cultivator o
land at the end of the Bengal or Fusli year, as th
case may be, such ryot or cultivator shall be liabl
to be ejected from the land in respect of which the arrear is due; and the perso
to whom the rent is payable shall be at liberty to make such new arrange
ment as he may judge proper for the management of the land in question.

Liability of farmer to have his lease cancelled for arrear adjudged due.

XV. When an arrear of rent shall be adjudged to be due from any farmer o
other lease-holder, not being an actual cultivato
nor having a right of occupancy or a transferabl
interest in the land, the lease held by such farm
or lease-holder shall be liable to be cancelled.

No ryot or cultivator to be ejected, and no lease to be cancelled, unless in execution of decree under this Act.

XVI. Provided always, that no ryot or cultivator shall be ejected from
land held or cultivated by him on account of
arrear of rent remaining due at the end of the ye
and no lease shall be cancelled on account of
arrear of rent, otherwise than in execution o
decree or order under the provisions of this Act.

Cognizance of suits under this Act.

XVII. (1) All suits for the delivery of pottahs or kabooliuts or for th
determination of the rates of rent at whi
such pottahs or kabooliuts are to be delivere

(2) all suits for damages on account of the illegal exaction of ren
of any unauthorized cess or impost, or on account of the refu
of receipts for rent paid, or on account of the extortion of rent
confinement or other duress;

(3) all complaints of excessive demand of rent, and all claims
remission of rent on account of diluvion or other cause;

(4) all suits for arrears of rent due, whether on account of land eith
kheraji or lakheraj, or of any rights of pasturage, forest-righ
fisheries, or the like;

(5) all suits to eject any ryot or cultivator, or to cancel any lease
account of the non-payment of arrears of rent, or on account o
breach of the conditions of any contract by which a ryot
vator may be liable to ejectment or a lease may be li
cancelled;

(6) all suits to recover the occupancy or possession of a
tenure from which a ryot or cultivator, farmer or
illegally ejected by the person entitled to receive ren

(7) all suits arising out of the exercise of the power of d
red on zemindars and others by sections XCVII and
or out of any acts done under color of the exercis
power, as hereinafter particularly provided;

shall be cognizable by the Collectors of land revenue, and shall b
and tried under the provisions of this Act, and shall not be cogniza
other Court, or by any other Officer, or in any other manner.

Suits by zemindars against their agents for money or accounts.

XVIII. Suits by zemindars and others in receipt of the re
against any agents employed by th
management of land or collection of
money received or accounts kept by such agents, or for papers in th

sion, shall be cognizable by the Collectors, and shall be instituted and tried under the provisions of this Act.

Ejectment of cultivators, farmers, &c., by zemindars.

XIX. If any zemindar or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind denominated ticca zur-i-peshgee or the like, in which an advance has been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the repayment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court.

Measurement of lands.

XX. If the proprietor of an estate or tenure intending to measure any lands which he has a right to measure is opposed in making such measurement by the occupant of the land, or if any ryot or cultivator, having received notice of the intended measurement of land held or cultivated by him which is liable to such measurement, refuses to attend and point out such land, the proprietor of the estate or tenure may make application to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act, and shall pass an order either allowing or disallowing the measurement, and, if the case so require, enjoining or excusing the attendance of any such ryot or cultivator.

Applications to dispossess grantees of land exempt from revenue.

XXI. So much of section X, Regulation XIX, 1793, as authorizes and requires proprietors and farmers of estates and dependent taluks, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the 1st December 1790, of their own authority to dispossess the grantees of the proprietary right in such land and to re-annex it to the estate or taluk in which it may be situate, is repealed; and any proprietor or farmer who may desire to dispossess any such grantee shall make application to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. But nothing contained in this Act relative to the limitation of suits shall be held applicable to such applications.

Time for commencement of suits generally.

XXII. Except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action.

Time for commencement of suits for grant of pottahs, &c.

XXIII. Suits for the delivery of pottahs or kabooliuts and for the determination of the rates of rent at which such pottahs or kabooliuts are to be delivered, may be instituted at any time during the tenancy. But no ryot or cultivator shall be entitled to claim an abatement of the rent previously paid by him, although such rent may be in excess of the rate to which he would be liable under section III of this Act if he have paid such rent for three years previous to the institution of the suit.

Time for the commencement of suits for arrears of rent.

XXIV. Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal or Fusli year in which the arrear claimed shall have become due. For arrears of rent due at the passing of this Act, suit shall be brought within three years after the passing of this Act; but nothing in this section shall be held to enlarge the period now allowed by law for the institution of any such suit.

Time for the commencement of suits against agents for money, papers, or accounts.

XXV. Suits for the recovery of money in the hands of an agent or for the delivery of accounts or papers by an agent, may be brought at any time during the agency, or within one year after the determination of the agency of such agent, or in the case of claims now existing within one year after the

passing of this Act; but nothing in this section shall be held to enlarge the period now allowed by law for the institution of any such suit.

Mode of instituting suits. Form of plaint or statement of claim.

XXVI. Suits under this Act shall be instituted by presenting to the Collector a plaint or statement of claim which shall contain the name, description, and place of abode of the plaintiff; the name, description, and place of abode of the defendant, so far as they can be ascertained; the substance of the claim, and the date of the cause of action.

Statement of claim to be written on stamped paper, except when plaintiff is unable to pay for a stamp.

No other stamp duty to be required in suits under this Act.

XXVII. The statement of claim shall be written on paper bearing a stamp of the value of eight annas; but if the Collector be satisfied of the inability of the plaintiff to pay for a stamp, he may receive such statement on plain paper. No stamp shall be required in respect of any petition or other proceeding connected with the suit or with the execution of any order or judgment passed thereon, or for copies of any papers.

Documentary evidence to be produced by plaintiff.

XXVIII. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Collector at the time of presenting his statement of claim. Unless such document be delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

Form of plaint in suits for arrears of rent.

XXIX. If the suit be for the recovery of an arrear of rent, the statement shall specify the name of the village and of the pergunnah or other local division in which the land is situate, the yearly rent of the land, the amount (if any) received on account of the year for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due. If the suit be for an arrear alleged to be due from any ryot or cultivator, the plaintiff, in addition to any other documents upon which he may rely in support of his claim, shall produce the jumma-wasil-bakee account of the village or tenure for the year preceding that for which the arrear is claimed if the same be not already filed in the Collector's Office: but this last rule shall not be held applicable to the case of an auction-purchaser or other person who, by reason of his having recently acquired possession of the village or tenure, or for any other cause, may, in the judgment of the Collector, be unable to produce the said account.

Documentary evidence to be produced by plaintiff in such cases.

Form of plaint in suits for ejectment of ryot, &c., or for recovery of occupancy or possession of land, &c.

XXX. If the suit be for the ejectment of any ryot or cultivator, farmer, or tenant, from any land, farm, or tenure, or for the recovery of the occupancy or possession of any land, farm, or tenure, the statement shall describe (as circumstances may require) the extent, situation, and designation of the same; and if necessary for the identification of the land, shall set forth the boundaries of such land.

Warrant of arrest in what cases to be issued.

XXXI. When in any suit against an under-tenant or cultivator for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers, or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, he shall present with his statement of claim an application for the issue of such warrant. When such application is presented, the Collector shall examine the plaintiff or his agent, and inspect the documents adduced by him in support of his claim, and if there be *primâ facie* grounds for believing the claim to be well founded, and that if a summons be issued the defendant will abscond instead of appearing to answer the claim, provided also the defendant be resident in the district in which the suit is instituted, the Collector may issue a warrant for the arrest of the defendant. The warrant shall be in the Form A contained in the schedule to this Act, or to the like effect, and shall be accompanied by a notice addressed to the defendant, enjoining him, if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence. But no such warrant shall be issued in a suit for arrears of rent due in respect of a dependent taluk or other transferable tenure, which, as hereinafter provided, is liable to sale in execution of any decree which may be passed in the case.

Procedure after arrest of defendant.

XXXII. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Collector, unless he forthwith deposit with the officer entrusted with the execution of the warrant such sum as may be specified therein.

Procedure when defendant is brought before the Collector under warrant.

XXXIII. When a defendant is brought before the Collector under warrant, the Collector shall with all convenient speed proceed to try the case in the manner hereinafter provided when a defendant appears on summons; and if the suit cannot be at once adjudicated, the Collector may, if he think fit, take security from the defendant for his appearance whenever the same may be required at any time whilst the suit is depending or before the final decree which may be passed thereon shall be fully executed, and may commit the defendant to the civil jail to be there detained until he shall furnish such security or deposit such sum as the Collector shall order.

Procedure if warrant of arrest cannot be served upon the defendant.

XXXIV. If the warrant of arrest cannot be served upon the defendant, the Collector, on the application of the plaintiff, shall either postpone the case for such period as he may think proper in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation to be affixed in his own office and at the residence of the defendant fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice at the residence of the defendant. If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

In all other cases, summons to issue and personal attendance of defendant may be required.

XXXV. In all other cases the Collector shall direct the issue of a summons to the defendant, and if the plaintiff require the personal attendance of the defendant, and satisfy the Collector that such personal attendance is necessary, or the Collector of his own accord require such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons, otherwise the summons shall order the defendant to appear personally or by an agent duly authorized on his behalf who has personal knowledge of the subject, or who shall be accompanied by a witness who has such personal knowledge.

The day to be specified in the summons how to be fixed. Defendant to be ordered to produce necessary documents and to bring witnesses willing to attend without process.

XXXVI. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be, or be supposed to be, at the time, from the place where the Court is held, and the summons shall order the defendant to produce any document which he may have in his possession of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence. It shall also enjoin him to bring with him his witnesses if they are willing to attend without issue of process; and shall be in the Form C contained in the schedule to this Act, or to the like effect.

A copy of the plaint to be sent with the summons. Summons how to be served.

XXXVII. A copy of the statement of claim shall be sent with the summons, and the summons shall be served by delivering a copy of the summons and of the statement to the defendant personally when practicable; or if the summons cannot be served on the defendant personally, by affixing a copy of the summons and a copy of the statement to some conspicuous part of his usual place of abode, and also by affixing copies of the same in the Collector's Office.

Endorsement by Nazir if summons has been personally served or not.

XXXVIII. If the summons be served personally, the Nazir shall endorse on the summons the fact of such service. If personal service be not effected, the Nazir shall endorse on the summons the reason of not serving it personally, and how it has been served.

Execution of process in another district.

XXXIX. If the usual place of abode of the defendant be in another district, the summons, together with the cost of the service thereof, shall be sent by dâk to the Collector of such district, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

Cost of serving summons or warrant to be deposited in Court.

XL. The amount of the cost of serving the summons, or, if a warrant be applied for, of serving the warrant, shall in all cases be deposited in Court upon the same day or the day next following that on which the plaint or statement of claim is presented to the Collector, and if the said amount be not so deposited (except in cases in which the Collector may allow the issue of summons free of cost under the discretion reserved to him in section CXXXI) the case shall not be brought on the file of suits; but the plaintiff may present another plaint at any time within the period allowed by the rules for the limitation of actions.

On appearance of parties, defence to be made, after which the parties may be examined by the Collector or cross-examine each other.

XLI. Upon the appearance of the parties on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason to be recorded by the Collector, the Collector shall call upon the defendant or his agent to make his defence. The defence shall be made either in writing in the official language of the district or verbally, and if made verbally shall be reduced into writing in the presence and under the personal superintendence of the Collector; after which the Collector shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other. If either of the parties be not bound to attend personally, any agent by whom he shall appear, or any witness who shall accompany such agent, shall be examined and cross-examined in like manner as the party himself would have been if he attended personally.

Witnesses to be examined.

XLII. If either of the parties shall bring forward a witness on such day, the Collector shall take the evidence of such witness.

Documentary evidence to be produced by defendant.

XLIII. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the time of making his defence; and unless such document be so delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

After examination, Collector may make his decree if no further evidence is required.

XLIV. If after the examination required by section XLI and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Collector shall make his decree accordingly.

Consequence of inability of agent to answer.

XLV. If, on such examination as aforesaid the agent of either party be unable to answer any material question relative to the case which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to answer as aforesaid shall attend in person on such day; and if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default, or make such other order as he may deem proper in the circumstances of the case.

Collector to record issue and to fix a day for hearing further evidence.

XLVI. If on such examination as aforesaid it appear that the parties are at issue on any question of fact upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.

Parties shall produce their witnesses on the day of trial; or Collector, on application of either party, shall issue summons for the attendance of a witness.

XLVII. The parties shall bring forward their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day either to give evidence or to produce a document, he shall apply to the Collector in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Collector shall issue a summons requiring such witness to attend.

Rules regarding attendance, examination, &c., of witnesses.

XLVIII. The provisions of the Regulations and Acts and all other rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration, and punishment of witnesses, whether parties to the case or not, in cases before the Civil Courts of the Presidency of Bengal, shall, except so far as the same may be inconsistent with the provisions of this Act, apply to and be of equal force and effect in suits under this Act.

Employment of authorized agents.

XLIX. Any party to a suit may employ an authorized agent to conduct the case on his behalf, but the appointment of such agent shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or any order of the Court, and no fee for any agent shall be charged as part of the costs of suit in any case under this Act.

In what cases defendant shall not be heard by an agent.

L. If a defendant, summoned to attend personally, shall not attend in person in pursuance of the summons, he shall not be heard by an agent, unless the Collector be satisfied that there is a reasonable excuse for his non-attendance. A defendant who has evaded a warrant of arrest and has not afterwards attended in person within the term of the proclamation prescribed in section XXXIV, shall not be heard by an agent.

Collector may grant time or adjourn hearing.

LI. The Collector may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to the production of further proof or for other sufficient reason to be recorded by the Collector, adjourn the hearing or further hearing of any case in such manner as to him may seem fit.

Collector may cause local enquiry to be made.

LII. The Collector may at any stage of a case cause a local enquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person. The provisions of the laws in force relative to local enquiries by Ameens or Commissioners under orders of the Civil Courts shall apply to any local enquiry made by any officer under this section, and, so far as they are applicable, to enquiries made by the Collector in person. In the latter case the Collector, after completing the enquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.

Consequence of neither party appearing on the day of trial.

LIII. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial under section XLVI, neither of the parties appear, the case shall be struck off, with liberty to the plaintiff to bring a fresh suit unless precluded by the rules for the limitation of actions.

If defendant only appear to dispute the demand, Collector shall dismiss the case; but if defendant admit the claim, Collector shall decree upon such admission.

Proviso.

LIV. If on any such day the defendant only appear, the Collector shall dismiss the case with costs, unless the defendant admit the cause of action, or any part of it; in which case the Collector shall proceed to give judgment for the plaintiff upon such admission without costs. Provided that such judgment, if there be several defendants, shall be only against the defendant who makes the admission.

If plaintiff only appear, Collector may proceed *ex parte*.

LV. If on any such day the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff and any documentary or oral evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may make an *ex parte* decree against the defendant.

If defendant appear on a day to which the case is postponed, Collector may allow him to be heard in answer to the suit.

LVI. If the defendant shall appear on any subsequent day to which the hearing of the suit may be postponed under the last preceding section, the Collector may, upon such conditions, if any, as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

Consequence of neither party appearing on the day fixed for the trial of any issue.

LVII. If on the day fixed for the trial of any issue under section XLVI neither of the parties appear, the case shall be struck off under the conditions provided in section LIII. If on any such day one only of the parties appear, the issue shall be tried and determined *ex parte*.

Revival, reversal, and alteration of *ex parte* decrees under certain rules and conditions.

LVIII. If a decree be made *ex parte*, and the party against whom such decree shall have been made, appear, either in person or by agent, if a plaintiff within fifteen days from the date of the Collector's order, and if a defendant within such time as the Collector shall deem reasonable under all the circumstances of the case, but before the decree shall have been finally executed, and shall show good and sufficient cause for his previous non-appearance and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and alter or rescind the decree, according to the justice of the case. But no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

Defendant may pay money into Court in satisfaction of the demand.

LIX. The defendant in any action under this Act may pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sum shall be paid to the plaintiff. If the defendant deposit less than the sum claimed and the plaintiff elect to proceed in the case, and ultimately recover no further sum than shall have been paid into Court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

If plaintiff elect to proceed and ultimately recover no further sum than that paid into Court, he shall be liable to the subsequent costs.

No interest on deposits.

LX. No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

If on trial of suit for delivery of pottah, parties do not agree as to the time for which the pottah is granted, Collector to fix the time.

LXI. If on the trial of a suit for the delivery of a pottah instituted by a ryot or cultivator having a right of occupancy on payment of rent at pergunnah-rates as explained in section III, the parties do not agree as to the term for which the pottah is to be granted, the Collector shall fix such term as under the circumstances of the case he may think just and proper. Provided that in permanently-settled estates the term shall not be longer than ten years, and in estates not permanently settled shall not extend beyond the period for which the proprietor of the estate has engaged with Government. Provided, also, that if the defendant be a farmer or other person having only a temporary interest in the land, the term of the pottah shall not extend beyond the period of the continuance of such interest. For cultivators not having a right of occupancy, the term of pottah shall be exclusively in the discretion of the person entitled to the rent of the land.

Proviso.

If in actions for arrears of rent a third claimant, appear, he is to be made a party to the suit.

LXII. If in an action for the recovery of arrears of rent the right to receive the rent of the land or tenure involved in the action is claimed by any third person as being in actual possession of the same, such third person shall be made a party to the suit and the question of possession shall be put in issue, and the right of the plaintiff or of such third person to recover the rent of the land or tenure shall be determined according to the fact of possession. Provided always that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

Proviso.

Suits for ejectment or cancelment of lease.

LXIII. Any person desiring to eject a ryot or cultivator or to cancel a lease on account of non-payment of arrears of rent, may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of suits for the ejectment of a ryot or cultivator or the cancelment of a lease, the decree shall specify the amount of the arrear, and the ryot or cultivator or the lease-holder may, at any time before the execution of the decree, stay the execution by paying such amount into Court, together with costs of suit.

Judgment how to be pronounced

LXIV. The Collector shall pronounce judgment in open Court, and the provisions of Act XXXIII of 1854 shall be applicable thereto.

If person required by the decree refuse to grant pottah, Collector may do so.

LXV. When a decree is given for the delivery of a pottah, if the person required by the decree to grant such pottah refuse or delay to grant the same, the Collector may grant a pottah in conformity with the terms of the decree under his own hand and seal, and such pottah shall be of the same force and effect as if granted by the person aforesaid.

Refusal of person to execute kabooliut as required by the decree.

LXVI. When a decree is given for the delivery of a kabooliut, if the person required by the decree to execute such kabooliut shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person, and a copy of the decree under the hand and seal of the Collector shall be of the same force and effect as a kabooliut executed by the said person.

Mode of executing decree for ejectment or reinstatement of ryot or cultivator.

LXVII. If the decree be for the ejectment of any ryot or cultivator from land occupied by him, or for the reinstatement of any ryot or cultivator in the occupancy of land from which he has been ejected, the decree shall be executed by an order issued to the Nazir to give the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy; and if any opposition is made to the execution of such order, the Magistrate, on the application of the Collector, shall give effect to the same.

Punishment for obstructing execution.

Mode of executing decree for cancelment of a lease or for ejectment or reinstatement of a farmer or tenant.

LXVIII. If the decree be for the cancelment of any lease or the ejectment of any farmer or other person (not being an actual cultivator) or for the reinstatement of such farmer or person in the possession of a farm or tenure from which he has been ejected, the decree shall be executed by erecting a pole upon some place within, or adjacent to, the farm or tenure, and proclaiming to the cultivators or other occupants at some convenient place or places the substance of the decree in regard to the farm or tenure.

Decree to contain order for immediate execution.

In what case a judgment-debtor may be detained or imprisoned without issue of process of execution.

LXIX. Every decree for the payment of money or costs shall contain an order for immediate execution; and if the decree be for arrears of rent or for money, papers, or accounts, and the defendant have been committed to jail or appear pursuant to the conditions of the security given under section XXXIII, he may, without the issue of any process of execution, be detained in or committed to the civil jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree.

Liability of surety on failure to deliver judgment-debtor into custody.

LXX. If the judgment-debtor have given security for his appearance and be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

Issue of process of execution.

LXXI. Process of execution may be issued against either the person or the property of a judgment-debtor; but process shall not be issued simultaneously against both person and property. Process of execution against the person or moveable property of a debtor shall be in the Form D or E contained in the schedule to this Act, or to the like effect.

Application for execution against moveable property.

LXXII. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor, but if the creditor is unable to furnish such list he may apply for a general attachment of the debtor's effects to the amount of the judgment and costs. In either case the property to be seized shall be pointed out by the creditor or his agent.

How long warrant shall continue in force.

LXXIII. Process of execution shall bear date on the day on which it is signed by the Court, and no warrant shall continue in force for a longer period than sixty days calculated from such date.

Second and successive warrants.

LXXIV. Second and successive warrants of execution may be issued by order of the Collector on the application of the judgment-creditor after the expiration of the period above fixed for the continuance in force of a previous warrant. No such warrant shall continue in force for a longer period than sixty days.

Time for issue of warrant.

LXXV. Process of execution shall not be issued upon any judgment without previous notice to the party against whom execution is applied for if when application for the issue of the process is made a period of more than one year shall have elapsed from the date of the judgment or from the date of the last previous application for execution.

Execution not to issue against heir or representative of a deceased party without notice.

LXXVI. Execution on a judgment shall not issue against the heir or other representative of a deceased party without notice to such heir or other representative to appear and be heard.

No process of execution to be issued three years after date of judgment.

LXXVII. No process of execution of any description whatsoever shall be issued on a judgment under this Act after the lapse of three years from the date of such judgment.

Warrant against the person.

LXXVIII. If a warrant issue for taking in execution the body of any person, the Nazir of the Court shall cause him to be seized, and unless such person shall immediately deposit with the officer entrusted with the service of the warrant the full amount specified therein, the Nazir shall bring him before the Collector. If such person shall not then deposit in Court the full amount specified in the warrant or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor, the Collector shall send him to the civil jail, there to remain for such time as shall be directed by the warrant unless he shall in the meantime pay the full amount specified therein. Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three calendar months when the amount decreed exclusive of costs does not exceed Rs. 50, or six calendar months in any other case.

No person to be imprisoned a second time under same judgment, but his property to be liable to attachment.

LXXIX. Any person once discharged from jail shall not be imprisoned a second time under the same judgment, but such discharge shall not extinguish the liability of such person under the decree, or exempt any property belonging to such person from attachment in execution of the same.

Diet-money to be deposited at the time of issue of warrant.

LXXX. Any person applying for a warrant of arrest under section XXXI or suing out process of execution against the body of any person, shall deposit with the Nazir of the Court, at the time of the issue of the warrant, diet-money for one month of thirty days at such rate as the Collector may direct, not exceeding two annas per diem, unless the Collector for any special reason direct that deposit be made at a higher rate, which shall not exceed four annas per diem.

Payment of diet-money in advance during imprisonment.

LXXXI. Payment of diet-money at the same rate shall be made previous to the commencement of each succeeding month of the imprisonment, in failure of which the party confined shall be discharged.

Diet-money to be costs in suit.

LXXXII. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit, and any diet-money not so spent shall be returned to the person who deposited the same.

List of property to be prepared by the Nazir, and proclamation of sale to be published, &c.

LXXXIII. In executing a writ of execution against the moveable property of a debtor liable under this Act, the Nazir shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor. A copy of the said proclamation and list shall be transmitted to the Collector and shall be affixed in his office.

Custody and sale of moveable property taken in execution.

LXXXIV. No sale of any moveable property taken in execution shall be made until after the end of ten days next following the day on which such property may have been so taken. Until such sale the property shall be deposited by the Nazir in some fit place, or it may remain in custody of some fit person approved by the Nazir. The provisions of sections CXIV to CXVIII, so far as the same are applicable, shall be applied to sales under this section.

Collector to stay sale of moveable property seized if a third party claim any interest therein.

LXXXV. If before the day fixed for the sale a third party appear before the Collector and by petition supported by his oath or affirmation claim a right or interest in any of the moveable property taken in execution, the Collector may stay the sale of such property.

Collector to adjudicate such claims.

LXXXVI. The Collector shall adjudicate upon such claim and make such order between the claimant and the plaintiff and defendant in the original suit as shall seem fit. In trying such claim the Collector shall be guided by the rules contained in this Act so far as they may be applicable.

Claimant failing to establish his right, liable to pay compensation to judgment-creditor.

LXXXVII. If the claimant shall fail to establish his right to the property taken in execution, the Collector at the time of disposing of the case may award to the judgment-creditor against such claimant as part of the costs such sum as he may consider sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

No appeal from order of Collector under the two last preceding sections.

Proviso.

LXXXVIII. No appeal shall lie from any order passed by the Collector under the two last preceding sections. But the party against whom the same may be given shall be at liberty to bring a suit in the Civil Court to establish his right at any time within one year from the date of the order; provided that, if the order be for the sale of the property, the suit shall be for damages against the judgment-creditor by whom the property was brought to sale.

Sale not vitiated by irregularity in publishing or conducting the same.

Proviso.

LXXXIX. No irregularity in publishing or conducting a sale of moveable property under an execution shall vitiate such sale, but this rule shall not be held to deprive any person who may sustain damage by reason of such irregularity from recovering such damage by action in the Civil Court; provided such action be brought within one year from the date of sale.

Sale of transferable tenures in execution of decrees for arrears of rent.

XC. If the decree be for an arrear of rent due in respect of an under-tenure which by the title-deeds or the custom of the country is transferable by sale, the judgment-creditor may make application for the sale of the tenure, and the tenure may thereupon be brought to sale in execution of the decree, according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in Act of . But no such application shall be received when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor, so long as such warrant remains in force. If after sale of an under-tenure any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the debtor.

If third party claim to be the proprietor and lawful possessor of such under-tenure, Collector to stay the sale and to enquire into and adjudicate upon the claim.

XCI. If before the day fixed for the sale of any such under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of such under-tenure, a third party appear before the Collector and on oath or affirmation allege that such third party and not the

person against whom the decree has been obtained is the proprietor of such under-tenure and was in lawful possession of the same at the time when such decree was obtained, and shall deposit in Court the amount of the decree or give sufficient security for the same, the Collector shall stay the sale and proceed to enquire into and adjudicate upon the claim.

Mode of adjudicating such claims.

XCII. In trying such claim the Collector shall be guided by the rules contained in this Act, so far as the same may be applicable, and the judgment passed by the Collector on such claim shall be subject to the same rules in respect of appeal as a judgment in a suit instituted under this Act.

Execution of decrees given in favour of sharers in undivided estates or tenures.

XCIII. If a decree is given in favour of a sharer in a joint undivided estate, dependent taluk, or other similar tenure for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate or taluk or tenure, application for the sale of such under-tenure shall not be received unless execution shall have been first taken out against any moveable property which the judgment-debtor may possess within the district in which the suit was instituted, and the sale of such property, if any, shall have proved insufficient to satisfy the judgment. In such case such under-tenure, if of the nature described in section XC, may be brought to sale in execution of the decree in the same manner as any other immoveable property may be sold in execution of a decree for money under the provisions of the two next following sections.

In all cases of decrees for money, if judgment cannot be satisfied by sale of debtor's moveable property, execution may be had against his immoveable property.

XCIV. In the execution of any decree for the payment of money under this Act not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the district in which the suit was instituted, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor.

Mode of executing process if immoveable property be a house, shop, or other building.

XCV. If the immoveable property against which execution is applied for be a house, shop, or other building, process shall be issued in the same manner as for the attachment and sale of moveable property, and the provisions of section LXXXIV shall be applicable to the execution of such process. If

If it be a saleable under-tenure.

the property be a saleable under-tenure, it shall be sold under the provisions of Act of applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof. If the property be

If it be an estate or a share of an estate.

an estate or a share of an estate, it shall be sold under the rules in force for the sale of such property for the recovery of demands recoverable by the same process as arrears of land revenue.

Consequence of objection being offered before the sale of any immoveable property.

XCVI. If before the day fixed for the sale of any immoveable property as aforesaid, objection shall be offered to the sale on the ground of such property not belonging to the judgment-debtor, and consequently not being liable to be sold in execution of a decree against him, the Collector, if satisfied that there is sufficient ground for so doing, shall stay the sale and proceed to enquire into and adjudicate upon the objection, in the same manner and subject to the same right of appeal as is provided in section XCII.

Produce of the land to be held hypothecated for the rent.

Arrears of rent may be recovered by distraint under the following rules.

XCVII. The produce of the land is held to be hypothecated for the rent payable in respect thereof; and when an arrear of rent, as defined in section XIII of this Act, is due from any cultivator of land, the zemindar, lakheraj dar, farmer, dependent talukdar, under-farmer, or other person entitled to receive rent immediately from such cultivator, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due under the following rules.

Cultivators who have given security to be exempt from distraint.

XCVIII. Provided always, that when a cultivator has given security for the payment of his rent, the produce of the land occupied by such cultivator shall not be liable to distraint for any arrear of rent that may accrue due in respect of such land.

No distraint in certain cases.

XCIX. After the lapse of one year from the time when this Act comes into operation, distraint shall be lawful only when a kabooliut has been executed or a decree obtained under section LXVI in respect of the rent for the recovery of which distraint is made. Distraint shall not be made for any arrear which has been due for a longer period than one year.

Power of distraint to be exercised by managers under the Court of Wards, &c.

C. The power of distraint vested by section XCVII in zemindars and other persons entitled to receive rent from cultivators of land, may be exercised by managers under the Court of Wards, surburakars of estates held under khass management, and other persons lawfully entrusted with the charge of landed property; and also by the naibs, gomashtahs, and other agents employed by any such persons as aforesaid in the collection of rent if expressly authorized by power of attorney in that behalf. Provided that, if any illegal act is committed by any such naib, gomashtah, or other agent in the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

Proviso.

Standing crops, &c., when attached, to be reaped and stored by the cultivator, or, if he neglect to do so, by the distrainer.

CI. When standing crops and other ungathered products of the earth are distrained, the distress shall be made at or about the time when such crops or products are ready to be reaped or gathered, and such crops and products may, notwithstanding the distress, be reaped and gathered by the cultivator, and may be stored in such granaries or other places as are commonly used by him for the purpose. If the cultivator neglect to do so, the distrainer may cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood. No crops or products other than the produce of the land in respect of which an arrear of rent is due and no other property whatsoever shall be liable to distraint under this Act.

Defaulter to be served with a written demand, &c., before or at the time of distraint.

CII. Before or at the time when distraint is made under this Act the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter, or if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence in the presence of witnesses, who shall sign a certificate of the notice and account having been so affixed.

Distress to be proportionate to the arrear if not paid or tendered.

CIII. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid of value proportionate to the amount of the arrear with costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or if he be absent affix it to his usual place of residence in the manner provided in the last preceding section. Except so far as may be necessary for the due preservation of the distrained property, the same shall not be removed from the place where the distress is made, but shall there remain in the charge of some person appointed by the distrainer for the purpose.

List of property to be distrained, to be served on owner.

Charge of distrained property.

Time for making distress.

Power of entry.

CIV. Distress shall be made between sunrise and sunset; and distrainers are authorized to force open any golah, granary, or other building, and to enter any dwelling-house the door of which may be open, for the purpose of attaching any property as aforesaid which may be lodged therein. If a distrainer shall be opposed, or shall apprehend resistance, or shall desire to force open the door of a dwelling-house for the purpose of attaching property as aforesaid, he shall make application to the Police Darogah, and thereupon the Darogah shall proceed as directed in section XXVII, Regulation XX, 1817.

Distrainer may apply for aid of the Police upon occasion of resistance made or apprehended.

Persons empowered to distrain may give written authority to their servants to do so.

CV. When any person, empowered to distrain property under section XCVII or section C, shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority which may be on plain paper) for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

Distress to be withdrawn if defaulter tender payment of arrear and expenses of attachment prior to the day of sale.

CVI. If at any time after property has been distrained and prior to the day fixed for its being put up to sale as hereinafter provided, the owner of the property shall tender payment of the arrear demanded of him and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Application for sale.

CVII. Within five days from the time of making the distress, or, if the property distrained consist of standing crops or ungathered products, within five days from the storing thereof, the distrainer shall apply for sale of the same to the Civil Court Ameen, or other officer authorized to sell property in satisfaction of decrees of the Civil Court within the circle in which the distrained property is situate, or to such other public officer as the Lieutenant-Governor of Bengal or the Lieutenant-Governor the North-Western Provinces shall appoint for the purpose.

Form of application.

CVIII. The application shall be in writing and shall contain an inventory or description of the property distrained, the name of the defaulter and his place of residence, the amount due, and the date of the distress, and the place in which the distrained property is deposited. Together with the application, the distrainer shall deliver to the Civil Court Ameen or other officer the amount necessary for the service of a notice upon the defaulter as hereinafter provided.

Cost of notice upon defaulter to be deposited by distrainer.

Procedure by Civil Court Ameen, &c., on receipt of application.

CIX. Immediately on receipt of the application the Civil Court Ameen or other officer shall transmit a copy of it to the Collector, and shall serve a notice (which shall be in the Form F contained in the schednle to this Act, or to the like effect) on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice. He shall at the same time put up in the cutcherry of the Moonsiff, or other Court or office to which he may be attached, and if in the North-Western Provinces in the cutcherry of the tahsildar, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited. The proclamation shall contain a description of the property, the demand for which it is to be sold, and the place where the sale is to be held.

Ameen to suspend sale on receipt of Collector's certificate of the institution of a suit.

CX. If a suit shall be instituted before the Collector in pursuance of the aforesaid notice, the Collector shall transmit to the Civil Court Ameen or other officer, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit; and on such certificate being received by or presented to the Ameen or other officer, he shall suspend proceedings in regard to the sale of the distrained property.

Suits to contest distrainer's demand before issue of notice of sale.

CXI. A person whose property has been distrained in the manner herein before provided may institute a suit to contest the demand of the distrainer immediately after the distraint of his property and before the issue of notice of sale. When such suit is instituted, the Collector shall proceed in the manner prescribed in the last preceding section. If thereafter application for the sale of the property is made to the Civil Court Ameen or other officer, he shall transmit a copy of the application to the Collector, and suspend further proceedings pending the decision of the case.

CXII. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with security binding himself to pay whatever sum may be adjudged to be due from him with interest and costs of suit, and when such bond is executed the Collector shall give to the owner of the property a certificate to that effect, or, if so requested, shall serve the distrainer with notice of the same; and the distrainer, upon such certificate being presented to him by the owner of the property or served on him by order of the Collector, shall immediately withdraw the distress.

Distress to be withdrawn on receipt of Collector's certificate that the owner has executed a bond with security to pay amount of decree with interest and cost.

CXIII. On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainer has not been certified to the Civil Court Ameen or other officer in the manner hereinbefore provided, he shall, unless the said demand, with costs of the distress at such rate as shall be allowed by him, be discharged in full, proceed to sell the property or such part of it as may be necessary in the manner following.

On expiration of period fixed in the proclamation of sale, if institution of suit to contest distrainer's demand have not been certified, sale may be proceeded with.

CXIV. The sale shall be held at the place where the distrained property is deposited, or at the nearest bazar, gunge, haut, or other place of public resort, if the Civil Court Ameen or other officer should be of opinion that it is likely to sell there to better advantage. The property shall be sold by public auction in one or more lots as the officer holding the sale may think advisable, and if the demand with the costs of distress and sale be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

Place and manner of sale.

CXV. If on the property being put up for sale a fair price in the estimation of the officer holding the sale be not offered for it, and the owner of the property or some person authorized to act on his behalf apply to have the sale postponed until the next day, or the next market day if a market be held at the place of sale, the sale shall be postponed until such day and shall be then completed, whatever price may be offered for the property.

If fair price be not offered, sale may be postponed to another day, and shall be then completed at whatever price may be offered.

CXVI. The price of every lot shall be paid for in ready money at the time of sale or as soon after as the officer holding the sale shall think necessary; and in default of such payment the property shall forthwith be put up again and sold. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Payment of purchase-money.

CXVII. From the proceeds of the sale of distrained property the officer holding the sale shall make a deduction at the rate of ten per centum on account of the costs of the sale, and shall transmit the amount to the Collector in order that it may be credited to Government. He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress and of the issue of the notice and proclamation of sale prescribed in section CIX to such amount as, after examination of the statement of expenses furnished by the distrainer, he shall think proper to allow. The remainder shall be applied to the discharge of the arrear for which the distraint was made with interest thereon up to the day of sale, and if there be any overplus it shall be delivered to the person whose property shall have been sold.

Proceeds of sale.

CXVIII. Officers holding sales of property under this Act and all persons employed by or subordinate to such Officers, are prohibited from purchasing, either directly or indirectly, any property sold by such Officers.

Officers holding sales prohibited from purchasing.

CXIX. Civil Court Ameens and other Officers as aforesaid are required to bring to the notice of Collectors any material irregularities committed by distrainers under colour of this Act; and if in any case, on proceeding to hold a sale of property, the Civil Court Ameen or other Officer shall find that, through the practices

All irregularities to be reported to the Collector.

Officer not to proceed to sale if he find that defaulter has not received due notice.

of the distrainer, or from any other cause, the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, and the Collector shall direct the issue of another notice and proclamation of sale under section CIX, or pass such other order as he may think proper.

Recovery of expenses if Ameen proceeds to place of sale and no sale takes place.

CXX. When a Civil Court Ameen or other Officer has proceeded to any place for the purpose of holding a sale and no sale takes place, either for the reason stated in the last preceding section, or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to the Civil Court Ameen or other Officer, the charge of ten per centum on account of expenses shall be leviable and shall be calculated on the estimated value of the distrained property. If the demand of the distrainer be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property and may be recovered by the sale of such portion thereof as may be necessary. In every other case it shall be paid by the distrainer and may be recovered by warrant under the hand of the Collector. Provided always, that in no case shall a larger amount than ten rupees be recoverable under this section.

Proceedings of Civil Court Ameens, &c., subject to revision and orders of Collectors.

CXXI. All proceedings under this Act of the Civil Court Ameens and other Officers as aforesaid shall be subject to the revision and orders of the Collectors, and the Collectors, with the sanction of the Boards of Revenue, may require the submission of such periodical reports and statements of business performed by the Civil Court Ameens and other Officers as may be thought necessary.

Second proclamation of sale.

CXXII. When a suit has been instituted to contest the demand of a distrainer and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Collector shall issue an order to the Civil Court Ameen or other Officer authorizing the sale of the property, and on the application of the distrainer, which shall be made within five days from the receipt of such order by the Civil Court Ameen or other Officer, such Ameen or Officer shall publish a second proclamation in the manner prescribed in section CIX, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation; and, unless the amount adjudged to be due with the costs of the distress be paid intermediately, shall proceed to sell the property in the manner hereinbefore provided.

Procedure after institution of suit to contest distrainer's demand.

CXXIII. In all suits instituted to contest the demand of a distrainer, the distrainer shall be required to prove the arrear in the same manner as if he had himself brought suit for the amount under the foregoing provisions of this Act. If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favour of the distrainer, and the amount may be recovered by sale of the property as provided in the last preceding section if the distress has not been withdrawn, and if any balance remain due after such sale by execution of the decree against the person and any other property of the defaulter, or if the property have been released on security by execution of the decree against the person and property of the defaulter and of his surety. If, on the other hand, the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favour of the plaintiff as the circumstances of the case shall seem to require.

Any person, whose property has been distrained for arrears of rent alleged to be due from another, may institute a suit against the distrainer, &c.

CXXIV. If any person shall claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer and such other person, to try the right to the property, in the same manner, and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand. When any such suit is instituted, the property may be released upon security being given for the value of the same. If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the

value thereof, as the case may be, for the benefit of the distrainer. If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may seem to require. Provided always, that no claim to any produce of land, liable to distraint under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.

Proviso.

CXXV. If in any case in which property has been distrained for an arrear of rent and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed by any person other than the distrainer as being in possession of the rent of the land, such other person shall be made a party to the suit and the question of possession shall be put in issue, and the right of either party to distrain for rent shall be determined according to the fact of possession. Provided always, that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

Procedure if distrainer's right to distrain be disputed.

CXXVI. If any person, whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing suit to contest the demand, or to try the right to the property, as the case may be, within the period allowed by sections CIX and CXXIV, and his property is in consequence brought to sale, he may nevertheless institute a suit under this Act to recover damages for the illegal distress and sale of his property.

Persons prevented from suing in time to save their property from sale may sue for damages.

CXXVII. If any person empowered to distrain property or employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act, or if any distrained property shall be lost, damaged, or destroyed by reason by the distrainer not having taken proper precaution for the due keeping and preservation thereof, the owner of the property may institute a suit under this Act to recover damages for any injury which he may have thereby sustained.

Also persons aggrieved by any illegal act of distrainer.

CXXVIII. If any person not empowered to distrain property under sections XCVII and C of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distrain or sell or cause to be sold any property under colour of this Act, the owner of the property may institute a suit under this Act to recover damages from such person for any injury which he may have sustained from the distraint or sale. The said person shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence in addition to any damages which may be awarded against him in such suit.

Unlawful distraint.

CXXIX. Provided always, that any suit which may be instituted under any of the three last preceding sections shall be commenced within three months from the date of the occurrence of the cause of action.

Time for commencing suits for damages.

CXXX. If any person shall resist a distraint of property duly made under this Act, or shall forcibly or clandestinely remove any distrained property, the Collector, upon complaint being made within fifteen days from the date of such resistance or removal, shall cause the person accused to be arrested, and if the offence be proved and the offender be the owner of the property, shall order him to be imprisoned in the civil jail for six months, or until the whole arrear due to the distrainer with all expenses and costs shall sooner be paid or levied by distress and sale of the property of the offender under warrant of the Collector. If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be

Resistance of process.

liable to a fine not exceeding one hundred rupees, or in default of payment thereof to imprisonment for a period not exceeding two months.

Service of process.

CXXXI. Every process issued by a Collector under this Act shall be under the seal and signature of the Collector, and shall be served or executed by the Nazir or by an Officer of his establishment at the cost of the party at whose instance it is issued. The amount of such cost, and, in the case of summons to a witness, any sum required for the travelling expenses of such witness, shall be deposited in Court before the process is issued. Provided that, if in any case the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Service of process to be attested.

CXXXII. Whenever, in accordance with the provisions of this Act, any notice, summons, proclamation, or other process is served by affixing a copy thereof to some part of the usual place of abode of the person named in the process, such service shall be attested by the signature of not less than three persons residing in the same neighbourhood, one of whom shall, if practicable, be the village chowkidar or local Police Officer.

Contempt of Court under Chapter X of the Penal Code.

CXXXIII. When any of the offences described in chapter X of the Penal Code is committed in contempt of the lawful authority of a Collector or other public servant duly exercised under the provisions of this Act, it shall be competent to the Collector to punish the offender as for a contempt of Court, and to adjudge the punishment authorized by the clause applicable thereto.

Warrant for apprehension of offender under the last preceding section.

CXXXIV. In any such case as is referred to in the last preceding section, if the offender be not present in Court, the Collector may summon him to answer to the charge, and if after due service of the summons he fail to attend, may issue a warrant for his apprehension.

Contempt of Court under Chapter XI, clause 39 of the Penal Code.

CXXXV. Whenever any such offence as is described in clause 39, chapter XI of the Penal Code is committed in contempt of the lawful authority of a Collector in any stage of a judicial proceeding under this Act, it shall be competent to the Collector to punish the offender as for a contempt of Court and to adjudge the punishment authorized by the said clause.

Collector competent to hold a court in any part of his jurisdiction.

CXXXVI. It shall be competent to the Collector to hold a court for hearing and determining suits under this Act in any place within the limits of his district or local jurisdiction, provided that every hearing and decision shall be in open court,

Proviso.

and that the parties to the suits or their authorized agents shall have had due notice to attend at such place.

Agents or mukhtars.

CXXXVII. Any person may practise as an agent or mukhtar in a Court held by a Collector under this Act without any formal license from the Collector. But it shall be competent to the Collector to prohibit any person, who has been convicted by a competent Court of a criminal offence, or who has been found guilty of fraudulent or dishonest conduct in the discharge of his duty as agent or mukhtar, to practise as an agent or mukhtar in his Court. When any charge of fraudulent or dishonest conduct in the discharge of his duty is brought against an agent or mukhtar, the Collector shall proceed in the manner prescribed in section IV, Act XVIII of 1852, and the order passed in the case shall be open to appeal to the superior Revenue authorities.

Powers of Deputy Collectors.

CXXXVIII. All the powers vested in the Collector by the preceding sections of this Act may be exercised by any Deputy Collector in cases referred to him by a Collector, and in all cases without such reference, by any Deputy Collector having local jurisdiction in any sub-division of a district.

Collectors and Deputy Collectors to be subject to general direction and control of the Commissioners and the Boards of Revenue.

CXXXIX. In the performance of their duties under this Act the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners and the Boards of Revenue; and the Deputy Collectors shall be subject to the direction and control of the

Collectors to whom they are subordinate. Except as otherwise herein provided, all orders passed by a Collector under this Act shall be appealable to the Commissioner; and all orders passed by a Deputy Collector shall be appealable to the Collector; but no judgment or order of a Collector or Deputy Collector in any suit, and no order of a Collector or Deputy Collector in the execution of any decree, under this Act, shall be liable to be reversed or altered unless the same is expressly declared to be open to revision or appeal by the provisions of this Act.

No appeal from orders of Collectors and Deputy Collectors in certain cases.

CXL. All orders which may be passed by a Collector under sections CXXXIII and CXXXV shall be appealable to the Commissioner; and all such orders passed by a Deputy Collector shall be appealable to the Collector. In all such cases the order which may be passed in appeal shall be final and conclusive.

Appeal from orders of Collectors and Deputy Collectors for contempt of Court.

CXLI. In suits under clauses 2, 4, and 7 of section XVII and under section XVIII of this Act, if the amount sued for or the value of the property claimed does not exceed fifty rupees, the judgment of the officer holding the Court shall be final, and not open to revision or appeal except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a cultivator or tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in sections CXLIV and CXLV of this Act.

No appeal from any decree for money below fifty rupees unless the decision involve some question of right to enhance rents or some question relating to a title to land.

CXLII. In suits in which the judgment of the officer holding the Court is final as provided in the last preceding section, the Collector, or if the case have been decided by a Deputy Collector, the Deputy Collector, with the sanction of the Collector, may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of, or could not produce at the time of trial.

In suits not open to appeal, Collector or Deputy Collector may grant a re-hearing upon the discovery of new evidence, &c.

CXLIII. When any such suit as aforesaid is decided by a Deputy Collector, the Collector, on the application of either party, if preferred within thirty days from the date of the decision, may call for the record of the case, and if there have been substantial defect in the procedure or investigation, from which there may be strong probable grounds for presuming a failure of justice, the Collector may set aside the judgment of the Deputy Collector, and make such investigation into the merits of the case and pass such decision thereon as to him may seem fit. But no judgment of a Deputy Collector in any such suit shall be reversed or altered, nor shall a re-hearing be directed, on the ground that the decision of any question of fact is contrary to or not warranted by the evidence duly taken in the case.

In such suits when decided by a Deputy Collector, the Collector on application may call for the case and set aside the judgment on the ground of substantial defect of procedure and himself pass orders.

CXLIV. In all suits other than those in which the judgment of the officer holding a Court under this Act is declared to be final by section CXLI, an appeal from the judgment of such officer shall be open to the Zillah Judge.

In suits other than those under section CXLI, appeal, to lie only to Zillah Judge.

CXLV. The petition of appeal shall be written on the stamp paper prescribed for appeals to the Zillah Judge from the subordinate Civil Courts with reference to the amount or value of the property involved in the appeal, and the rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals under this Act.

Rules regarding presentation and hearing of appeals.

CXLVI. Suits under this Act shall be preferred in the Revenue Office of the district or sub-division in which the cause of action shall have arisen. If the lands comprised in any taluk, farm, or other tenure, or any lands held under one lease or engagement or at one entire rent in respect of which arrears of rent may be due, are situated in more than one district or sub-division, the district or sub-division in which the greater part of such lands is situate shall be held to be the district or sub-division in which the cause of action has arisen; and if any question shall be raised respecting the district or sub-division in which the greater part of the lands is situate, the Board of Revenue, or if all the lands be situate in one district the Collector of the district, shall decide the question, and such decision shall be conclusive on the point of jurisdiction.

Suits to be preferred in the Revenue Office of the district or sub-division in which the greater part of the lands is situate.

CXLVII. Except as provided in the last preceding sections, no Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the district to which he is appointed, by reason of such lands forming part of an estate the revenue of which is paid into the treasury of the said district.

Except as above, Collector not to exercise jurisdiction in respect to lands situate beyond his district.

CXLVIII. Nothing contained in this Act shall be held to affect the right vested in proprietors of land under direct engagements with Government, of bringing to sale for arrears of rent putni taluks and other similar tenures under the provisions of Regulation VIII, 1819.

Saving of rights of proprietors in respect of putni taluks, &c., under Regulation VIII of 1819.

CXLIX. This Act shall commence and have effect from and after the day of

Commencement of Act.

CL. The word "Collector" as used in this Act shall include any Deputy Collector or other officer vested with the full powers of a Collector and placed in independent charge of a district. The words "civil jail" shall include the civil jail of the zillah and any place appointed by the Executive Government for the confinement of prisoners by any Court constituted under this Act. The word "Nazir" shall include any officer of a Court authorized to serve or execute its process. Unless there be something in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females.

Interpretation.

SCHEDULE A.

Form of Warrant of Arrest.

No. (of suit), dated

In the Court of

A. B., *Plaintiff.*
C. D., *Defendant.*

To the Nazir of the Court of

Whereas the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant forthwith before the Court, unless he deposit with you, or with the officer employed by you to serve this warrant, the sum of

[*If the suit be for the delivery of papers, here specify the same.*]

Dated this day of 185 .

SCHEDULE B.

Form of Notice to accompany such Warrant.

In the Court of

A. B., *Plaintiff.*
C. D., *Defendant.*

[*Name, description and address of Defendant.*]

Whereas the said A. B. has brought a claim against you in this Court for , and has obtained a warrant for your arrest, a copy of the statement of claim is hereunto annexed, and you are hereby required to bring with you to the Court all documents on which you may intend to rely in support of your defence.

SCHEDULE C.

Form of Summons to Defendant.

No. (of suit), dated

In the Court of

A. B., *Plaintiff.*

C. D., *Defendant.*

[*Name, description and address of Defendant.*]

Whereas the said A. B. has brought a claim against you in this Court for , a copy of the statement of claim is hereunto annexed, and you are hereby required to appear in person [*if not specially required to appear in person, state, in person or by agent*] in this Court on the day of to answer the above-named plaintiff, and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

SCHEDULE D.

Writ of Execution against the Person.

A. B., *Plaintiff.*

C. D., *Defendant.*

To the Nazir of the Court of

Whereas the said C. D. was directed by a decree of this Court, under date the day of 185 , to pay to A. B. the sum of , and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to apprehend the said C. D., and unless the said C. D. shall pay you the sum of in satisfaction of the said decree and costs, and the sum of for the costs of executing this process to produce him before this Court to be dealt with according to law.

SCHEDULE E.

Writ of Execution against the Effects.

A. B., *Plaintiff.*

C. D., *Defendant.*

To the Nazir of the Court of

Whereas C. D. was directed by a decree of this Court, under date the day of 185 , to pay to A. B. the sum of , and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such movable property of the said C. D. as (is described in the list annexed, and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said C. D., on some convenient day not being less than ten nor more than fifteen days from the day of seizure, unless the amount levi-

Bill to amend the Law relating to the recovery of rent.

able as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

SCHEDULE F.

Form of Notice to owner of Distrained Property.

Office of Commissioner for sale of Distrained Property.

A. B., *Distrainer.*

[*Name, description, and address of the owner of the Property.*]

Whereas the said A. B. has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said A. B., or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold. Dated this day of 185 .

Statement of Objects and Reasons.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to reform the whole of the existing system for the recovery of rents and the adjudication of questions connected therewith.

The means by which under the present law landholders enforce the payment of their rents are distraint of the property of the defaulter and summary suit preferred before the Collector. The Collector is also authorized to try summarily suits brought by under-tenants to contest the demand of distrainers, and suits for damages for illegal distraint. The law on these subjects is very confused and imperfect, and is scattered through a vast number of Regulations and Acts;—a revision and consolidation of it has long been admitted to be a matter of urgent necessity.

The Regulations declare that ryots are entitled to receive pottahs for the lands cultivated by them, and to have their rates of rent adjusted on certain defined principles. They also prescribe penalties for the exaction of any excess above the legal rate of rent or of any unauthorized cess. Further, they recognize the right of all resident ryots to the occupancy of the lands cultivated by them so long as they pay the established rent. But the remedy in all these cases is by regular suit in the Civil Court [1]; and to refer a poor cultivator to a regular suit, under the present practice of the Courts, is almost tantamount to refusing him any remedy at all.

By section XX, Regulation VII, 1822, it is competent to Government "to vest in such of the Collectors as may be thought proper, authority (either generally, or within such limits as may be from time to time determined) to receive, try, and determine by summary process all suits for rent which may be preferred by zemindars, talukdars, or other sudder malguzars or farmers of land, or by any person in their behalf, against any dependent talukdar, zemindar, under-renter, ryot, or other under-tenant of whatever denomination, as well as all applications by ryots and the under-tenants contesting the demand of a sudder malguzar or farmer; and all complaints preferred by ryots or other under-tenants of whatever description, against landholders or farmers of land, or their respective agents or representatives, on account of excessive demand or undue exaction of rent, whether levied by distraint or otherwise, as well as all suits relative to the adjustment of accounts between landholders and farmers of land or under-tenants of whatever description, with their sureties, or with any agents or persons employed by them in the management of land, or the collection or payment of the rent of land, and to all other matters immediately connected with the demand, receipt, or payment of the rent of land, whether malguzari or lakheraj, or with the rent of orchards, pasture-grounds, and fisheries, commonly denominated pholkur, bonkur, and jolkur, or with any other asset of the land revenue, not included in the sayer abolished, together with all complaints of the non-delivery of pottahs when demandable under the Regul-

[1] The Sudder Court has indeed held that the Collector has jurisdiction to try suits of tenants against their landlords for illegal ouster from their holdings under colour of rights vested in the latter by law; but the correctness of the construction is doubtful.

tions, or complaints of the prescribed receipts not being given for actual payment of rent, and generally, complaints of any deviation from the Regulations, or from the established usage of the country relative to the matters aforesaid, or any violation of subsisting engagements in disputes respecting the rent and occupancy of land, between landholders or farmers of land and their under-tenants of whatever denomination."

These powers have, it is understood, been generally given to Collectors in the North-Western Provinces, and it has been more than once proposed that a similar course should be followed in the Provinces under the Bengal Government. Messieurs Mills and Harington, in their Code of Civil Procedure, recommended that the Revenue Officers should have jurisdiction in all such cases, and they proposed that, in preference to the present practice of a summary decision by the Collector subject to a re-trial of the same matter by regular suit in the Civil Court, "the trial before the Revenue Court should constitute the original suit in like manner as if the case had been brought as a regular civil action, and that the summary decision passed in such cases shall be open to a regular appeal on the merits to the Zillah Appeal Court," &c., &c. (page 175 of the Code).

I have adopted this principle in the present Bill, and I have applied to it, as intended by Messieurs Mills and Harington, the procedure of the Small Cause Courts Bill, with some slight variations taken principally from the Civil Code prepared by Her Majesty's Commissioners.

But before laying down rules of procedure, I have thought it right to re-enact in a concise and distinct form the provisions of the present law relating to the rights of ryots with respect to the delivery of pottahs, the adjustment of rates of rent, and the occupancy of land, and to the prevention of illegal exaction and extortion in connection with demands for rent. I have added a section (also in the spirit, but beyond the letter of the existing law) declaring landholders entitled to receive kabooliuts or written engagements from their ryots. It is only fair that, when a ryot has a right to demand a pottah, the landlord should have a right to demand a kabooliut. It is for the interest of the ryot himself that written engagements should be exchanged in all cases; and as, in a later part of the Bill, I propose that distraint should be allowed only when the distrainer holds a kabooliut, it is necessary to provide landlords with the means of enforcing the delivery of such documents.

Section XII, which provides means whereby a ryot may resign his lands when no longer able or willing to cultivate them, has been introduced in accordance with the urgent recommendations of many Bengal officers. These will be found amongst the papers printed in connection with the draft Act "to facilitate the trial of rights to attach tenures, and to eject occupiers of land in certain cases, and to prohibit the enforcement of such rights without the assistance of a Court of competent jurisdiction."

In Section XIX I have, I believe, provided for all the cases for which it was intended to provide by the draft Act just referred to. It would seem that cases of this kind fall properly under the jurisdiction of Collectors in accordance with the general principles of the Bill.

Section XX is rendered necessary by the withdrawal of the power, heretofore possessed by landholders, of compelling the attendance of their tenants. In many cases, especially when the proprietor is an auction-purchaser or has obtained the property under a decree, the enforced attendance of the cultivators at a measurement of the land may be absolutely necessary.

The introduction of section XXI has been suggested by some correspondence between the Government of India and the Bengal Government, in which the oppression practised on *bonâ fide* lakherajdars under colour of the power given to proprietors by section X, Regulation XIX, 1793, is pointed out.

It is not, I think, necessary to enter into any long explanation of that part of the Bill which contains the rules of procedure. I have endeavoured to restrict the issue of warrants of arrest on mesne process within as narrow limits as possible: it appears to be thought that the practice (which is now universal in rent cases) cannot be dispensed with altogether. When the right to property seized in execution of a decree is disputed, I have provided that, in the case of moveable property, the order of the Collector shall not be open to appeal; but that, if the order be for sale of the property, the person claiming

Statement of Objects and Reasons.

it may have his action in the Civil Court for damages against the person by whom it was brought to sale. In the case of immoveable property, I have thought it right to allow an appeal; departing in this respect from the rule laid down by Her Majesty's Commissioners, which admits of no appeal, but allows the claimant to institute a suit to establish his right.

I have made considerable alterations in the law of distraint, in the interest of the tenant, with the view of preventing as much as possible the abuses which have been so generally complained of. I have restricted the subject of distraint to the produce of the land in respect of which the arrear is due, and I allow no one to distrain who does not hold a kabooliut from the cultivator. I propose that the person entrusted with the sale of distrained property shall be a salaried officer, and not one remunerated, as at present, merely by a commission on sales; and I have made alterations in the mode of procedure with the object, mainly, of preventing the abuses, now said to be very general, of selling property on a mere nominal distress without any opportunity allowed to the tenant to replevy.

I have provided that, in the discharge of their duties under this Act, the Collectors shall be subject, as at present, to the general direction and control of the superior Revenue authorities; but that those authorities shall not have power to interfere with any judicial decision—the appeal from such decisions (in appealable cases) lying, as before stated, to the Zillah Judge. I propose, however, that there shall be no such appeal when the amount sued for, or the value of the property claimed, does not exceed fifty rupees; and no question of right to change the existing rates of rent, or of any title to land, is involved in the decision. But when such cases are decided by a Deputy Collector, I have thought it right to reserve a power of revision to the Collector in the event of any substantial defect of procedure or investigation involving a probable failure of justice.

The correspondence which at different times has passed on the subjects embraced by this Bill is very voluminous, and I have, I believe, consulted the whole of it. But I think it sufficient to print the letter of the Bengal Government, dated 5th March, and the reply of the Board of Revenue, dated 27th April 1855: the former contains a forcible statement of some of the evils which the Bill seeks to remedy, and the latter gives a summary of the proceedings of the Board in connection with this subject since the year 1848. With regard to the Board's proposal for authorizing the Munsiffs to take cognizance of all cases of the nature referred to, I remark that their recommendation rests entirely on the fact of the local jurisdiction of the Munsiff being of comparatively limited extent. But the advantages derivable from this arrangement will be equally attained by the measure which has been proposed, and is now being partially carried out, of breaking up the Collectorates into numerous sub-divisions under the charge of Deputy Collectors; and for the rest all cases arising between landlord and tenant, especially such as relate to the adjustment of rates of rent and the delivery of pottahs and kabooliuts, may be more appropriately adjudicated by the Collector than by the Munsiff. I consider the establishment of jurisdictions of limited extent to be indispensable to the successful working of this or any similar measure.

On the point of the ejectment and reinstatement of ryots, and their rights of occupancy in the lands cultivated by them, I beg to refer to the papers printed with the Bill "to facilitate the trial of rights to attach tenures and to eject occupiers of land in certain cases, and to prohibit the enforcement of such rights without the assistance of a Court of competent jurisdiction."

E. CURRIE.

P. S.—It will be seen that the Bill, as drawn, extends to the North-Western Provinces; and it will probably be thought that the re-establishment of order and government in those Provinces will afford full occupation to the authorities for some time to come, and that they will have little leisure for the consideration of the details of such a measure as this. But the Bill, which has now been some months in print, and the introduction of which has been deferred for the cause just alluded to, was designed principally for the correction of abuses which, under the operation of the existing law, have sprung up in Bengal; in that division of the Presidency remedial measures are urgently

required, and it seems to me that it is neither necessary nor expedient to delay their application any longer. If it should be thought proper, the operation of the Bill can be restricted in the first instance to Bengal, and extended to the North-Western Provinces at some future period with any modifications which the circumstances of those Provinces may be thought to require. Statement of Objects and Reasons.

E. C.

The 10th October 1857.

No. 1263, dated Raneegunge, the 5th March 1855.

From—Hodgson Pratt, Esq., *Under-Secretary to the Government of Bengal,*
To—*The Secretary to the Board of Revenue.*

Letter from Mr. Hodgson Pratt, Under-Secretary to the Government of Bengal (No. 1263, dated the 5th March 1855).

I am directed by the Lieutenant-Governor to request that you will lay before the Board of Revenue the following extracts from a memorandum on the affairs of the district of Chumparun which was submitted by the Joint Magistrate and Deputy Collector on the occasion of the Lieutenant-Governor's recent visit to that district:—

2. "The curse of this district is the insecure nature of the ryots' land-tenure. The cultivator, though nominally protected by Regulations of all sorts, has, practically, no rights in the soil. His rent is continually raised; he is oppressed and worried by every successive tikadar, until he is actually forced out of his holding, and driven to take shelter in the Nepal Terai. A list of all the ryots who have abandoned their villages on acconnt of the oppression of the tikadars within the last ten years would be a suggestive document.

3. "Another great evil is the way in which villages are continually sublet. I have known an instance where there were five different tikadars within eight years. Of course, all these five raised the rents of the village besides taking *salaami* and a hundred other oppressive *abwábs* from the unfortunate cultivators. Within the Bettia Raja's zemindari, villages are frequently given in the first instance to some durbar favourite, a coachman or a khidmutgar for instance, who immediately sublets it at a profit. The original grantee never goes near the village, nor takes the slightest interest in it. His object is simply to make as much of it as possible within the shortest time.

4. "I would desire to say a few words on the way in which distraint and sale is carried out by the Sale-Commissioners in this district. There are two Commissioners, one stationed at Mudhoobun, the other at Bettia. It is manifest that these two men cannot do justice to their appointments, even if they were inclined to do so, on account of the immense extent of country over which their jurisdiction extends. Moreover, their miserable rate of pay (under ten rupees a month) must necessarily lay them open to *doucewrs*. The five days allowed by law for entering security in a case of distraint is practically of no value in many parts of this district; as, before a man could reach the residence of the Sale-Commissioner from the more distant parts of his division, the time for giving bail would have expired.

5. "This is an evil which, under the present system of paying Commissioners by commission on the proceeds of sale, cannot be remedied. As it is, the district can with difficulty support the men at present appointed. I believe that a very strong feeling exists among the generality of the natives here against these Sale-Commissioners. They are not trusted, are considered corrupt and tyrannical, and unfortunately, from the distance of their localities from the sudder station, but little can be done by the Deputy Collector in the way of supervision. In Bettia, especially, I feel convinced that great oppression is exercised by the Sale-Commissioner; he is made the instrument of all sorts of rascality by the Raja's people, who are the principal owners of the villages in the Pergunnah Mujowah.

6. "Something has been done of late by making the Sale-Commissioners send in a daily report of all cases instituted before them. This plan has worked tolerably well, and has prevented the antedating of many attachments; andt hough not a perfect defence against oppressive zemindars, has done something towards keeping them within bounds. The whole system is, however, radically bad, and I should be very glad to see the power of distraint, as it at present exists, entirely taken away from the landholders.

7. "I have seen many instances since my arrival in this district of oppression under this Regulation. One I remember in particular, where a tikadar had distrained property to the amount of two hundred rupees, alleged *deficit* of rent on fifty beegahs of land. I happened to be encamped shortly afterwards at the village in which the land was said to be; and on going to the fields (at the request of the defendant) and calling in the putwari and others to show the fifty beegahs said to be cultivated by the man whose property had been distrained, the whole affair came out. The *asami* in reality cultivated four and a half beegahs only; all the rest was a fictitious claim got up merely to drive the man into paying enhanced rents. This, I fear, is only one of a very numerous class of cases; had I not been on the spot, the other party would have produced such strong evidence as it would have been impossible, even if the man could have got anybody to speak for him, to rebut. Kabooliuts would have been forced, and a decree in all likelihood given for the value of fifty beegahs instead of four. The

Letter from Mr. Hodgson Pratt, Under-Secretary to the Government of Bengal (No. 1263, dated the 5th March 1855).

unlimited power of distraint possessed by the zemindar is not sufficiently checked by the provisions of Regulation V of 1812, and becomes a tremendous engine of oppression against the ryot."

8. Everywhere during his march through this district, I am desired to say, the Lieutenant-Governor found the strongest evidence of the oppression which the tenants of the Raja of Bettia are here described as suffering. In every village and on every roadside the Lieutenant-Governor was beset by their complaints, and ample corroboration of all they stated was afforded by the indigo planters and the local authorities of the district.

9. All that the Lieutenant-Governor could then do was to signify to the Raja, which he did in open durbar, how strong was his disapprobation of such conduct, and this, His Honour was assured, had its effect for a time, but for a time only, as he has since been informed by a demi-official communication from the Commissioner of the Division, who has just visited the district, that this oppression cannot be said in any sensible degree to have abated.

10. The Lieutenant-Governor has had much consultation with the local officers and others acquainted with the affairs of the district as to the means of preventing or diminishing these evils, but with no very satisfactory result. He was, however, assured by the present Commissioner of Benares, whom he met shortly after leaving Chumparun, that in the zillahs of the North-Western Provinces such oppression could hardly remain long unredressed through the all-pervading agency of their tahsildars, who, located at convenient places in the interior, vested with both Police and Revenue powers, and responsible to one head, have great and wholesome influence in repressing abuses of the kind.

11. The Lieutenant-Governor is aware that the question as to the mode in which abuses of this kind are to be prevented in the zillahs of the permanent settlement is one of extreme difficulty, and one which has often been discussed, but never yet with any very effective result. Nevertheless, after what he has lately seen and heard, he cannot refrain from seeking once more to raise a discussion on the subject, than which none in the whole compass of our Government can be of greater and more pressing importance.

12. He desires, therefore, to place the subject before the Board of Revenue and to consult them as to the necessity of any change in the law being required to effect the desired amendment; and whether any change in the powers and arrangement of our executive agency is needed to give better effect to the law.

13. With regard to the latter, His Honour is very much disposed to wish that the system of a more widely diffused local agency, somewhat resembling that in use in the North-Western Provinces, were introduced into the districts of the Lower Provinces. Our system at present, I am desired to say, tends too much to collect functionaries at a sudder station, who might perhaps with better effect be spread over the interior. If this were done, the powers given to these local officers should be such as to render them most useful according to the circumstances of the particular part of the country in which they might be employed. For instance, in many parts, particularly of Bengal proper, where wealth and the complicated transactions arising out of wealth are more generally diffused, a Munsiff in the interior may often be a more useful officer than a Deputy Collector. But in Behar, and especially, as the Lieutenant-Governor was assured, in such a district as Chumparun, a Munsiff is of scarcely any use. The Munsiff at Mutehari has not enough civil work to fill up his time. The people are too poor to want a Civil Court, and civil suits there are none. But they grievously want a Deputy Collector to take up summary suits regarding rent, and to watch the proceedings of the Sale-Commissioners; and they want a Magistrate at hand to give them redress against the violence of such powerful oppressors as the Raja of Bettia.

Letter from Mr. A. Grote, Secretary to the Board of Revenue, Lower Provinces (No. 148, dated the 27th April 1855).

No. 148, dated 27th April 1855.

From—A GROTE, Esq., *Secretary to the Board of Revenue,*

To—*The Secretary to the Government of Bengal.*

I am desired by the Board of Revenue to acknowledge the receipt of Mr. Under-Secretary Pratt's letter, No. 1263, dated the 5th instant, stating the impression left on the mind of His Honour the Lieutenant-Governor by the

representations of the local authorities of Chumparun on the subject of the abuse of the law of distraint by the Raja of Bettia and his tikadars.

Letter from Mr. A. Grote, Secretary to the Board of Revenue, Lower Provinces (No. 148, dated the 27th April 1855).

2. The Board fear that similar abuses exist in too many districts in the Lower Provinces, and they trust that the strong light in which they have now been placed before His Honour may hasten the adoption of measures calculated to suppress them. It is on the subject of these remedial measures that the Board's opinion is requested. They are desired to state whether they think any change in the law to be necessary, or whether better effect can be given to the provisions of the existing law by a change in the powers and arrangement of the executive agency.

3. The Board will briefly review their own proceedings in the direction of a thorough reform of the laws of distraint and summary suit since the year 1848, when they circulated, for the opinions of all Revenue Officers, a set of rules for the conduct of summary suits drawn up by the then Officiating Collector of the very district in which His Honour has found abuses so rife, Mr. W. H. Elliott.

4. Before leisure could be found to digest the returns to the circular order, Mr. Ricketts joined the Board, bringing with him the draft of an Act for re-enacting, with amendments and modifications, all existing provisions on the subject of distraint and summary suit. The suggestions contained in this draft, as well as in the several district reports, were maturely considered by Mr. Gordon, and formed the subject of an elaborate minute by that gentleman, dated the 26th March 1851, of which the following is the substance.

5. Mr. Gordon commenced by considering Mr. Dunbar's suggestion for transferring the power to administer the law of distraint and summary suit to Munsiffs. Admitting the principle of such a transfer to be sound, and its advantages in offering ready redress in cases of abuse to be obvious, he pointed out that the Munsiffs had already more work than they could do, that they had not the means nor the establishment for dealing with arrested defendants, that they could only, under the law which constituted their office, entertain causes to a certain amount, and that whether they could be trusted with the custody of the large sums of money which would occasionally be deposited in their Courts, was questionable.

6. Mr. Gordon then enters on the subject of distraint, and noticing the remedial measures proposed in the returns, reducible as he shows to three, he dwells favourably on a suggession by Mr. Trevor, for requiring the notice of attachment of distrained property to be served from the Collector's office. He was of opinion that to require such a notice to be served on the distrainee before sale could be legally proceeded with, would be an effective check on the dishonest distrainer, and would not put the honest landholder to any very serious inconvenience.

7. Some observations follow on several sound suggestions offered by Mr. Reid, then Collector of Hooghly, on the treatment of cases of disputed title to property distrained and of double distraint, and on a proposal by Mr. Torrens, then Collector of Midnapore, to facilitate the furnishing of security by ryots whose property was distrained. Mr. Gordon was in favour of adopting these suggestions with some few modifications; and an opinion is recorded that the new law should provide distinctly for the exercise by the ryot of his right to abandon his tenure—a right which practically he is rarely able to assert contrary to the wishes of his landholder.

8. On the subject of summary suits, Mr. Gordon calls attention to the "general agreement amongst the local officers in recommending that when a landlord institutes a suit for rent, he ought to file with the plaint his documentary proof in support of his claim." He would adopt this recommendation; and a part of that documentary proof should, he thinks, be the *juma-wasil-bakee* of the previous year. All the suggestions thrown out by Collectors for improving the mode of summary procedure are then carefully considered and the objections to adopting them entered into. A decided opinion is pronounced in favour of suspending the right of landlords to arrest cultivators during the season of cultivation.

9. Mr. Gordon then proceeds to comment on his colleague's draft Act, in which he proposes several important modifications. He concludes by suggesting the appointment of a committee to consider the whole subject.

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10. Some notes on Mr. Gordon's minutes were subsequently made by Mr. Ricketts; but no decision on the draft Act had been come to, when in June 1852 a proposition came up from Mr. Stainforth, then Commissioner of Moorshedabad, to undertake the revision of the same laws. The office was at once accepted, and all the correspondence made over to Mr. Stainforth, by whom they were returned with another draft Act on the 15th May last.

11. As has already been explained to His Honour, in reply to an enquiry regarding the promised draft of a new Abkari Act, the Board have had little time during the last year and a half to give to such deliberations as should precede their proposal to legislate on subjects of importance. They will, however, state here those of the leading features of the two drafts which distinguish them from the existing laws.

12. Mr. Ricketts' draft is entitled "an Act for reducing into one Act and re-enacting with amendments and modifications the Regulations and Acts of the Bengal Code respecting the distraint and sale of property for arrears of revenue or rent, and the institution and trial of summary suits for arrears and exactions of revenue or rent," and it consists of seventy-eight sections.

13. It empowers to distrain "all landholders of every description and denomination having ryottis or ryots paying rent to them." It is a moot point under the present laws whether landholders other than of the six kinds specified in section II, Regulation XVII of 1793, have the power to distrain.

14. It allows distrainers to convey the distrained property to the nearest Sale-Commissioner's kutcherry and to proceed at once against the property of both tenant and his surety in cases where security has been given. In cases where security is given by the defaulter to contest the demand, it provides only for staying the sale of the distrained property, not for its release, until the suit shall have been decided.

15. It extends the period between attachment and sale. The application for sale may be at any time within eight days from the attachment, and the sale cannot take place within another eight days from the date on which the Sale-Commissioner serves notice of sale on the defaulter. The necessity for appraising previous to sale is dispensed with. Commissioners are required to examine and audit the distrainer's bill of expenses before paying him.

16. In summary suits it provides for the issue of the proclamation by the peon who is charged with the service of the dustuk. It limits the term of confinement of a defaulter under the operation of a summary decree to six months. It requires a decree-holder to apply for execution of his decree within four weeks, and at the expiration of six months it annuls the operation of the decree altogether, and exempts the defaulter from "further proceedings in any C[illegible] respecting such decree."

17. At the same time it provides for the sale under summary decree [illegible] taluks or transferable tenures or of khoodkasht ryoti tenures once a quar[illegible] and for the summary ousting of lease-holders or mere occupant ryots.

18. It provides distinctly for recovery with damages of sums exacted fr[illegible] ryots in excess of the fair demand.

19. It reduces the stamp-duty on all petitions and pleadings filed in su[illegible] mary suits to eight annas, and in the case of *bonâ fide* cultivators, exempts th[illegible] answers from stamp-duty altogether.

20. Other minor modifications of which it is the object of some to leg[illegible] existing practice need not be here noticed.

21. Mr. Stainforth's draft is entitled "an Act for modifying and con[illegible] dating certain Regulations and Acts in force in the territories subject to [illegible] Government of Bengal respecting the realization of arrears of rent by summ[illegible] process," and it contains one hundred and four sections.

22. In submitting his draft, Mr. Stainforth draws attention to the foll[illegible] ing points which he expresses himself anxious to see passed into law :—

Firstly.—To deprive landholders of the power of summarily distraining [illegible] perty beyond the limits of their estates.

Secondly.—Not to allow distraint of the property of farmers beyond [illegible] limits of the landlord's estate: arrear of rent due from s[illegible] persons can be seldom so realized.

Thirdly.—Not to allow the property of persons who are declared to [illegible] sureties, but who do not admit themselves to be so, to be atta[illegible] ed, saving under summary suit.

Fourthly.—Distrained property not to be released till a suit in replevin shall actually have been instituted.

Fifthly.—Sales in execution of summary decrees to take place at any time during the year.

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23. The tendency of the modifications in both drafts is, it will be seen, to restrain landholders and to check the abuse of the still extensive powers vested in them by re-constituting the office of Sale-Commissioner. The latter is, under Act I of 1839 and previous Regulations, a mere agent, responsible only to Government for the due peformance of the act of sale. He may shut his eyes to the omissions of the distrainer, or if really anxious to do his duty, may unconsciously be made his tool. It is proposed to raise the character of the office and to give the Commissioner administrative functions for the exact discharge of which he will be responsible to the Collector—in fact, to advance the office one step towards that of the tahsildar of the North-Western Provinces alluded to by His Honour.

24. The abuses described by the Deputy Collector of Chumparun are the necessary consequences of rack-renting under laws of which the provisions are adequate for the protection of the ryots, but which are not vigorously brought into operation by the parties oppressed. No doubt, as the Board have already remarked when addressing Government on the subject of sub-division establishments, the remedy most obvious and promising immediate results is that specified in His Honour's 13th paragraph, the breaking up the present large jurisdictions and the bringing the local executive nearer to the several scenes of abuse. But to carry this to a sufficient extent may probably require something more than an increase in the number of sub-divisions.

25. As at present constituted, the Board see no objections to vesting Munsiffs with the power of adjudicating summarily and exercising all the powers of a Collector in regard to distraint; indeed, they are strongly impressed with the belief that this measure, more than any other which could be at present adopted, is calculated to strike at the root of the evils complained of. It is not so much, they think, the law that is in fault, as the means, or rather the want of means, for enforcing it. The legal difficulty noticed by Mr. Gordon is easily got over, as it has been in Sylhet, by appointing the Munsiff to be a Deputy Collector, and measures may be taken for providing places of confinement at the several Munsiffs' stations. The Board apprehend, however, that few arrested defendants are in practice confined; and if there is little difficulty in finding security at sudder stations, there will be less in finding it in the more immediate neighbourhood of the defendant's residence.

26. On the subject of leisure of the Munsiffs to undertake any additional duties and of the propriety of trusting them with the temporary custody of large sums of money, the Board cannot pretend to be competent to give an opinion. As a body they believe the character of the Munsiff is improving every year; and if, as has of late been the practice, new incumbents continue to be drawn from the same ranks that supply the Deputy Collector, there seems no serious grounds for the distrust entertained by Mr. Gordon.

27. In connection with the subject of distraint, the main source of the abuses so loudly and generally complained of, it occurs to the Board that it might perhaps without inconvenience be restricted to standing or gathered crops, the obvious, and in many cases the only real, security for the landlords' rent. There is not the same reason now for placing extensive powers in the hands of landholders. Though at liberty to charge interest themselves, no such demand is made on them by Government; and in well-administered districts a summary decree can generally be obtained within six weeks from the date of an arrear falling due. The rate of decisions of summary suits during 1853-54 was nearly equal to the rate at which they were instituted—a state of things very different from what prevailed when the law of distraint was last revised in 1812.

See paragraph 52 of last annual report.

Proceedings of the Legislative Council of India, dated the 31st October 1857.

Proceedings of the Legislative Council, dated the 31st October 1857.

MR. CURRIE moved the second reading of the Bill "to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal."

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Proceedings of the Legislative Council, dated the 31st October 1857.

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MR. PEACOCK said, before the Bill was read a second time, he wished to make a few observations upon it. It appeared to him to have been prepared with great care—it contained many very excellent provisions, and great credit was due to the Honourable Member for Bengal for the labour which he had bestowed upon it. But there were two points which involved questions of principle, and upon which he did not wish to be considered as binding himself in giving his assent, as he intended to do, to the motion for the second reading.

The first point related to a question of revenue, namely, the stamp-duty in suits instituted under the Bill. Section XXVII provided as follows:—

"The statement of claim shall be written on paper bearing a stamp of the value of eight annas; but if the Collector be satisfied of the inability of the plaintiff to pay for a stamp, he may receive such statement on plain paper. No stamp shall be required in respect of any petition or other proceeding connected with the suit or with the execution of any order or judgment passed thereon, or for copies of any papers."

By section XVII, certain suits, which must now be preferred in the Civil Courts as regular suits, were required to be preferred before the Collector. In all these cases, therefore, instead of the stamp-duty required by the existing law, there would be only an eight-anna stamp for the statement of claim. By Regulation VIII of 1831, claims in summary suits which might be preferred before a Collector were liable to a stamp-duty of one-fourth of the value payable in regular suits; but the eight-annas stamp-duty imposed by the Bill would, in many cases, be less than one-fourth of the stamp-duty payable in a regular suit. The result, he believed, would be a considerable loss to Government. Her Majesty's Commissioners, by whom the Code of Civil Procedure was prepared, recommended that all judicial stamps should be abolished, but the Government of India recorded its opinion that financial considerations rendered it at present impossible to sacrifice the large amount of revenue derived from that source, and the clause proposed by the Commissioners was excluded from the Bill which was introduced into the Council for giving effect to the Civil Code. No one could be more desirous for the abolition of all stamp-duties upon legal proceedings than himself; but, in the present state of the finances of the country, he was unwilling to give his assent to the proposed alteration of the stamp-duties. He had been unable as yet to ascertain the amount of loss which would be caused by the proposed change. He believed that it would not be less than from one to two lakhs of rupees a year, and he did not think that the Council ought to pass the Bill as it stood without knowing more accurately than they did at present what was the probable amount of the loss which Government would sustain by the alteration. He thought that it would be far better that the Bill should leave the question of stamp-duties untouched, in the same way as the Bill relating to Civil Procedure had done. The whole question relative to stamp-duties upon legal proceedings would then be open for discussion upon a Bill for amending and consolidating the stamp-duties. Probably, the best mode of dealing with the matter would be to allow the Bill to be read a second time, and to refer it to a Select Committee with special instructions to report upon the expediency of making the proposed change before the Bill was published. If they should be of opinion that the change ought not to be adopted at present, the Bill would be modified accordingly, and then published for general information. It would not be fair to the public to publish the Bill in a form in which it proposed reduced stamp-duties, and then to alter it in committee so as to retain the present duties.

The other point upon which he did not wish to be considered as pledging himself by his vote for the second reading of the Bill, was that which related to the officers by whom suits under the Bill were to be cognizable. Many cases which must at present be instituted as regular suits in the Civil Courts would be transferred to the jurisdiction of Collectors exclusively. For instance, clauses 1 and 5 of section XVII transferred to the Collector the following cases:—

"All suits for the delivery of pottahs or kabooliuts, or for the determination of the rate of rent at which such pottahs or kabooliuts are to be delivered.

"All suits to eject any ryot or cultivator, or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot or cultivator may be liable to ejectment or a lease may be liable to be cancelled.

All questions of that nature must be tried as the law now stood in regular suits in the Civil Courts; but the section enacted that they, and also several others,

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"shall be cognizable by the Collectors of land revenue and shall be instituted and tried under the provisions of this Act and shall not be cognizable in any other Court, or by any other Officer, or in any other manner."

In short, by that section, suits which now could be instituted only as regular suits in the Civil Courts, must be tried by the Collector; and suits which might now be instituted before the Collector as summary suits and might also at the option of the party be tried as regular suits in the Civil Courts, must likewise be carried before the Revenue authorities. Now, many difficult questions might arise in some of these cases; and he thought there were many which had better be left to the ordinary Civil Courts under the new Code of Procedure than limited exclusively to the cognizance of the Revenue authorities. It was not to the Collector alone that the cognizance of these suits was entrusted. By section CXXXVIII,

"all the powers vested in the Collector by the preceding sections of this Act may be exercised by any Deputy Collector in cases referred to him by a Collector, and in all cases, without such reference, by any Deputy Collector having local jurisdiction in any sub-division of a district."

Thus a Deputy Collector might adjudicate upon cases which, under the present law, could only be tried in the Civil Courts, provided such cases were referred to him by the Collector; and he might adjudicate in like manner without any such reference if he had local jurisdiction in any sub-division of a district.

Now, if the Bill were to take away from ryots and others the right which they at present had of bringing their suits before the regular Courts, and were to refer them for a remedy to the Collectors and Deputy Collectors, the first question that arose was, who were to be the Deputy Collectors, from what class were they to be selected, and were the Deputy Collectors to be as numerous as the Civil Courts. In a despatch from the Honourable Court of Directors, dated 24th September 1856, the Honourable Court, speaking of the union of fiscal and magisterial duties, said—

"To remedy the evils of the existing system, the first step to be taken is, wherever the union at present exists, to separate the police from the administration of the land revenue. No Native officer should be trusted with double functions in this respect. We do not see the same objection to the combination of magisterial and fiscal functions in the hands of our European officers, because we can better hope they will not abuse their powers, and because, [illegible] employing the Collector as the principal Magistrate of each district, we are able to obtain [illegible] he chief administration of the penal laws a more efficient, and especially a more experienced [illegible] of officers than would otherwise be available. This is an important consideration which [illegible] at never to be lost sight of. Nevertheless, it is still more important that the officers who [illegible] rol the police should be required to undertake frequent tours of their districts. And they [illegible] st not be so burdened with other duties, such as the preparation of forms, returns, and [illegible] ements, as to be deprived of the time sufficient for this essential purpose. This supervision, [illegible] rcised by intelligent officers, who are accessible at all times, is the most certain and effectual [illegible] ck to every abuse of authority by subordinate servants of police."

He apprehended, therefore, that it was not intended that Native Deputy [illegible] istrates should be made Deputy Collectors for revenue purposes. He [illegible] erstood that the Lieutenant-Governor of Bengal had appointed many [illegible] puty Magistrates to be Deputy Collectors, not for the purpose of exercis- [illegible] all the powers of Deputy Collectors, but merely for the purpose of decid- [illegible] summary suits relating to rent. It had been said that there was an ad- [illegible] ntage in referring suits relating to rent to the Revenue authorities, because [illegible] knowledge and experience which they acquired in the discharge of their [illegible] enue functions enabled them to decide such suits better than the Civil [illegible] urts. But, admitting for the state of argument that such was the [illegible] le, a Deputy Magistrate who was made a Deputy Collector merely for the [illegible] rpose of deciding such suits would have no advantage over the Civil [illegible] urts by reason of his experience in revenue matters. If he were made a [illegible] puty Collector, not for the purpose of exercising all the powers of Deputy [illegible] llector, but for the purpose of exercising the single power of adjudicating [illegible] mmary suits for arrears of rent, there could be no use in calling him a Deputy [illegible] llector. He was in reality not a Deputy Collector, and it would be more

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correct to say "that the suits might be tried by a Deputy Magistrate." The Lieutenant-Governor had said that he had invested Deputy Magistrates with the powers necessary to enable them to administer summary justice in revenue suits as an experiment. But whilst the experiment was going on, and before the result could be known, the Honourable Member for Bengal brought in this Bill, giving to Collectors and Deputy Collectors jurisdiction in a new class of suits which had never been tried as summary suits before, involving important and difficult questions which under the present law could be determined by the Civil Courts only in regular suits. Very recently the British Indian Association had addressed the Lieutenant-Governor objecting to the appointment of Deputy Magistrates to be Deputy Collectors.

They said—

"The Committee of the British Indian Association request the favour of your laying before His Honour the Lieutenant-Governor of Bengal their views respecting some recent appointments made under His Honour's orders by which Deputy Magistrates have been invested with the powers of Deputy Collectors with authority to adjudicate summary suits for the recovery of rents, &c.

"The Committee feel confident that these appointments have been made with due regard to the qualifications of the individual officers vested with the united offices, but they yet believe that the system of entrusting to the same hands the authority and powers of Deputy Magistrates and Deputy Collectors is open to grave objections.

"The question, as His Honour must be aware, is not a new one, and has more than once been most elaborately discussed. And it was after such discussion that, in Bengal, it was resolved to keep the district magistracy separate from the revenue administration. The Commissioners lately entrusted with the task of enquiring into the practice of torture in the Presidency of Madras, after a searching and patient investigation, have also arrived at the conclusion that the union of magisterial and fiscal functions in the hands of district officials is one of the principal causes of the many administrative evils prevailing in that presidency.

"The importance of the jurisdiction exercised by Deputy Collectors in their judicial capacity cannot be over-estimated. On the proper administration of the laws for the summary trial of claims to rent, &c., depends, more than upon any other branch of the judicial system, the prosperity of all classes of the community connected with the land. A single unjust decision often involves thousands of tenants in difficulties. It does not therefore appear to the Committee of this Association expedient to place so important a branch as the civil administration in the hands of persons for whose capacity to undertake it there is no reliable guarantee.

"The duties of a Deputy Magistrate, the Committee further observe, are such as to engross even in the smallest sub-division all the energies and attention of a single officer. Their proper performance depends much upon their forming the exclusive duty of that officer. When, however, he is burdened with the duties of a Deputy Collector, detriment to the public service must inevitably follow whether the individual charged with the united offices considers his magisterial duties subordinate to his revenue duties, or *vice versâ*."

It appeared to him that to invest Deputy Magistrates, who ought to [illegible] going about their districts, with judicial powers of the kind contemplated [illegible] this Bill, was objectionable; and that the objection was not removed by call[illegible] them Deputy Collectors.

The Lieutenant-Governor, in answer to the petition of the British Indian Association, gave the following explanation. He said—

"The measure to which the Committee object has been adopted by the Lieutenant-Governor chiefly with a view to give a better opportunity of redress against wrong to ryots living at a distance from the sudder station. The Lieutenant-Governor found it very generally [illegible] to objection that a ryot, in contention with his zemindar regarding rent, was obliged to [illegible] and in many instances taken by force, to a tribunal many miles from his family and friends, the distant sudder station, where it was quite easy for his powerful opponent to carry on his case, but next to impossible for the ryot to have any chance of success. And it was frequently represented to the Lieutenant-Governor that the enormous power of the zemindar over the ryot—a power too often exercised, as the Committee of the Association are doubtless aware, with merciless and oppressive rigour, could never be brought under any sufficient check until the summary suits regarding rent, by means of which the ryot is so liable to suffer injustice, should be heard and determined, not as now at a hopeless distance from the poorest and most helpless parties, but near the ryot's dwelling and in the midst of the people acquainted with the facts of each case."

It was perfectly right that ryots and others living at a distance from the sudder station should have an opportunity of bringing their complaints for redress against wrong before tribunals located near their homes. But the question was, what were these tribunals to be? Were they to be the Munsiffs, as other Civil Courts, or were they to be Deputy Magistrates called Deputy Collectors

lectors and invested with the powers of Deputy Collectors merely for the purpose of trying summary suits relating to rent?

The Lieutenant-Governor proceeded to say :—

"To effect this, it was determined, as an *experiment*, to invest Deputy Magistrates with the powers necessary to enable them to administer summary justice in revenue suits in the manner now objected to by the Committee of the Association.

"These suits are for the most part very simple, and require for their just decision little more than integrity and a reasonable acquaintance with the country and its agricultural population. These qualifications will, the Lieutenant-Governor thinks, be found in the officers to whom the powers in question have been confided. Further, their decisions are all liable to be revised by the Collector, and are also open to correction, if erroneous, by suit in a Civil Court.

"As an experiment, the measure will be watched with care, in order that any defect which may come to notice may receive immediate correction. And the whole system will be open to amendment if it should be found likely to fail of success. But, up to the present time, the class for whose benefit it was mainly intended has not been found to complain of it; and the objections raised to it have come entirely from the zemindar class who, though their opinions are entitled to all fair consideration, are, as the Committee must be sensible, not the parties by whom it could be expected that the measure would be in general very warmly approved or supported."

This Bill took away the regular suit for the purpose of getting rid of the decision of the Collector or the Deputy Collector in these cases, and proposed what he (Mr. Peacock) admitted was a much better system—namely, that of giving an appeal at once from the Collector or Deputy Collector to the Judge, instead of the present one of instituting a regular suit to reverse the decision, involving a regular appeal to the Judge, and then a special appeal to the Sudder Court. But still the question remained, in whom was the original summary jurisdiction to be vested? and it appeared to him to be objectionable to vest it in the Deputy Collectors. A Munsiff had to undergo an examination before he could be appointed to that office; but a Deputy Magistrate, though he was subjected to some examination, was subject to none which was a test of his ability to determine suits of the kind specified in section XVII of this Bill.

Then, the Bill contained a provision that suits involving sums under fifty rupees were not to be appealable; so that the decisions of Deputy Collectors or of Deputy Magistrates called Deputy Collectors were, in such cases, to be final. When he proposed in the Mofussil Small Cause Courts Bill, that the Munsiffs should have final jurisdiction under the Bill in claims not exceeding fifty rupees, the Lieutenant-Governor of Bengal objected, saying that the Munsiffs could not be safely trusted with the jurisdiction. Whatever opinion might be formed upon that subject when the Code of Civil Procedure came to be discussed, he was not satisfied that the Deputy Magistrates or Deputy Collectors were better qualified to be entrusted with final jurisdiction over those cases which must now be brought in the Civil Courts as regular suits, and which section XVII of the Bill proposed to transfer to them, than the Munsiffs were. It appeared to him that these regular suits ought not to be entrusted to Deputy Magistrates; or, in a round-about way, to Deputy Magistrates to be made Deputy Collectors for that purpose alone. It appeared to him that they should be left to the Civil Courts, not indeed as they existed at present, but as they would be constituted under the new Code of Civil Procedure.

He thought that the time of Deputy Magistrates ought not to be employed in trying summary suits relating to rent, even if they were competent to try them. But even if they were to be appointed Deputy Collectors for that purpose, unless the number of Deputy Magistrates should be greatly increased, ryots and others who might suffer from oppression and injustice would be driven to a greater distance, in order to obtain relief under the present Bill, than they would be if the Civil Courts were allowed to retain their present jurisdiction.

It was not his intention to oppose the second reading of the Bill in consequence of the views which he held regarding the two points on which he had addressed the Council. He should vote in favour of the second reading; but he wished it to be understood that he did not give his assent to the alteration of the stamp-duties, and to the transfer of jurisdiction which the Bill proposed from the Civil Courts to Deputy Collectors. He did not think that the present Deputy Collectors, even if they were competent, were sufficiently numerous to enable persons to obtain justice under the present Bill without seeking for it at an unreasonable distance. He objected to making Deputy Magistrates Deputy

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Collectors for the special purpose of trying such suits; and before he could assent to the proposed transfer of jurisdiction, he must know who were to be appointed Deputy Collectors, and how many Deputy Collectors were to be appointed.

MR. CURRIE.

MR. CURRIE said, he had to thank the Honourable and learned Member for the encouraging terms in which he had spoken of the Bill generally, and also for his intention to support the Motion for the second reading.

With respect to the two questions upon which the honourable and learned Member had spoken, he desired to make one or two observations.

The first was the question relating to stamp-duty. The Honourable and learned Member had referred to the course which had been followed with regard to the Code of Civil Procedure sent out by Her Majesty's Commissioners. But the case of this Bill did not appear to him (Mr. Currie) at all similar to that of the Civil Procedure Code. There, it was proposed that the stamp-duties should be abolished altogether. This Bill proposed still to retain a stamp-duty on the institution of suits. It introduced no change of principle, and no very large change in what had heretofore been the practice with respect to suits cognizable by the Revenue authorities. As remarked by the Honourable and learned Member, the Bill provided that in all cases the plaint should be written upon paper bearing a stamp of eight annas, and that no stamp-duty should be required in any other part of the proceedings. By the present law, as the Honourable and learned Member had also correctly observed, a stamp-duty to the extent of one-fourth the duty leviable on regular suits was chargeable in summary suits instituted before the Collector; but, at the same time, it was left to the discretion of the Collector "to receive a complaint on paper bearing a stamp of eight aunas from any independent talookdar, farmer, or ryot, if the complainant was *bonâ fide* unable to pay the amount of the prescribed stamp, or if the Collector should, for other reasons, consider the indulgence proper." In reality, therefore, the Collector might now receive plaints on eight annas stamp paper if he thought proper so to do. Previous to the enactment of the present law which he had just quoted (Regulation VIII of 1831), for all cases instituted before the Collector the stamp-duty had been eight annas. Regulation XV of 1824 declared that pleadings should be written on paper of that value whatever might be the amount of the suit. So that this Bill, in proposing that the stamp-duty for plaints should be eight annas, was merely reverting to the practice which had existed before 1831.

As to the Bill requiring the plaint alone to be upon stamped paper, and allowing all the other proceedings connected with the suit to be upon plain paper, that was the law at present with respect to suits instituted before Munsiffs. A very large proportion of the cases which this Bill transferred to the Collectors would, under the existing law, if instituted at all, be instituted before Munsiffs, and, in that case, except the institution-duty, no other stamp-duty would be chargeable in respect to them. And in cases instituted before the Collector, it was only the answer, the vakalutnama, if any, and the decree, which were required to be upon stamped paper: no other proceedings in the course of the suit were subject to any such charge. So that he really did not think that the change proposed to be made by this Bill was a very considerable one. It was not a change of principle, and it was not a very extensive change in detail.

He was not prepared to say what the financial result of the change would be. Doubtless there would be some loss to Government; but it was to be remembered that a main object of this measure was the relief of the poor man; and the object of the Legislature should be to make the administration of it as cheap as practicable.

Of course there might be a distinction made with regard to suits instituted by landholders for the recovery of rents, and it might be provided that such suits should be on stamped paper of a value bearing some proportion to the stamp-duty required for regular suits. But, at the same time, it ought to be remembered that suits for the recovery of rent were of a peculiar character. The payment of revenue depended on the recovery of rent; and therefore there was every reason why the recovery of rent should be facilitated. By the Bill as it stood, the power of recovery by distraint was very much restricted; and it was desirable that the only mode of recovery left to the zemindar, that of suit before the Collector, should be made as easy and inexpensive as possible.

For these reasons, it did not appear to him that there was any great reason to object to the course proposed in the Bill. But, at the same time, if the Council were of opinion that it was desirable to know what the financial result would be before the Bill was further proceeded with, he should urge no objection to the Motion which the Honourable and learned Member had said it was his intention to make after the Bill should have been referred to a Select Committee.

MR. CURRIE.

With respect to the second question, the class of officers before whom the cases in question were to be tried, the Honourable and learned Member had made no objection to the jurisdiction being vested in Collectors. His objection was limited to Deputy Collectors.

MR. PEACOCK remarked that he did object to the transfer to Collectors of some of the suits with respect to which the Bill gave them jurisdiction, and which would now be tried only by the regular Court.

MR. PEACOCK.

MR. CURRIE said he at present wished to address himself to the objections which the Honourable and learned Member had taken in regard to Deputy Collectors. He had understood the Honourable and learned gentleman to say that, generally, the Revenue authorities might have some special qualifications for the trial of these cases. But he had said, if the cases were to be made over to Deputy Magistrates who were appointed Deputy Collectors merely for the purpose of trying such suits, and not for exercising any other of the functions of Deputy Collectors, he should object to such an arrangement. He (Mr. Currie) was not aware of the ground upon which it was inferred that the revenue duties of the officers referred to would be so restricted; he apprehended that the object of giving to Deputy Magistrates the powers also of Deputy Collectors was to make them really Deputy Collectors and to employ them in the general duties usually performed by Deputy Collectors in charge of sub-divisions. He (Mr. Currie) himself had not had an opportunity of seeing the despatch from the Honourable Court of Directors to which the Honourable and learned Member had referred; but if the principle was there laid down that no Native Officer should hold the post of Deputy Magistrate conjointly with that of Deputy Collector, that would, undoubtedly, be a very serious impediment to providing the agency necessary for the efficient working of the Bill. It was to be observed, however, that, throughout those parts of the provinces where the administration was considered to work most satisfactorily, both fiscal and criminal duties were vested in the same officer. It was so in the Punjab, and it was so in the North-Western Provinces. And as to the alternative of giving the jurisdiction to the Munsiffs, he was certain that no one engaged in the administration in those parts would consent, willingly, to give the jurisdiction in cases of the nature referred to, to any other than the Revenue authorities. The cases were now tried by those authorities, and it was, he believed, considered necessary that they should be so tried.

MR. CURRIE.

The CHIEF JUSTICE asked if the tahsildars were not also Deputy Collectors?

THE CHIEF JUSTICE.

MR. CURRIE replied that they were, he believed sometimes, not always, Deputy Collectors, and sometimes Deputy Magistrates. They had police as well as fiscal jurisdiction. The thannah darogahs, he thought, were generally subordinate to them.

MR. CURRIE.

In the unsettled provinces where the Revenue authorities were constantly occupied in the settlement of estates, and in hearing questions of all kinds between zemindars and their tenantry, they had very great facilities of obtaining such information as would enable them to dispose satisfactorily of the class of cases for which this Bill provided. The examination of Munsiffs, to which the Honourable and learned Member had referred, was only a test of the candidate's knowledge of the laws and regulations. This knowledge would be of little use in enabling an officer to determine a suit in which the question at issue might be the rate of rent which a ryot should pay for a particular holding. Even in Bengal, Collectors had considerable facilities for making themselves acquainted with matters of that nature; for lands continually fell into the hands of Government by purchase or escheat or resumption, and settlements were to be made of them; there were also estates settled on temporary engagements which had to be re-settled; and these proceedings brought Collectors acquainted with the rates of rent and the relations between landlords and tenants. For these reasons, he thought that they were more suitable officers for the trial of these

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MR. CURRIE.

cases than Munsiffs, and he should be very sorry if any change were made in the Bill on this point. But that, of course, was a matter which the Select Committee, after receiving the opinions which the local Governments, their officers, and others concerned might send in, would consider and determine.

He did not think it necessary to trouble the Council with any further observations in reply.

The Motion for the second reading was then put and agreed to, and the Bill read a second time.

The Council adjourned.

Letter from Mr. C. T. Buckland, Junior Secretary to the Governenmt of Bengal (No. 190, dated the 26th January 1858).

No. 190, dated the 26th January 1858.

From—C. T. BUCKLAND, Esq., *Junior Secretary to the Government of Bengal,*

To—E. CURRIE, ESQ., *Member of the Legislative Council for Bengal.*

I am directed to forward herewith, for your consideration, a copy of a letter, No. 3150, dated the 16th instant, from the Commissioner of the Patna Division, suggesting a modification of sections CI and CVII of the Bill for amending the law relating to the recovery of rent.

Letter from Mr. E. A. Saumells, Commissioner of Revenue, Patna Division (No. 3150, dated the 16th January 1858).

No. 3150, dated the 16th January 1858.

From—E. A. SAMUELLS, Esq., *Commissioner of Revenue, Patna Division,*

To—*The Secretary to the Government of Bengal.*

Sections CI and CVII of the Bill for amending the law relative to the recovery of rent published in the Gazette of the 25th November last, would appear to require modification. These sections, following section 13, Regulation XVII of 1793, and section V, Regulation XXXV of 1795, enact that all standing crops and other ungathered products of the earth must be reaped and stored previous to sale, and that the sale should take place within a certain number of days from the storing thereof. But a case has recently been brought to my notice in which these provisions of the law, if carried out, would be productive of serious injury to the defaulting tenant. Sugarcane is a crop which cannot be stored without injury, and which it is the practice in this country to cut from time to time in small quantities to feed the mills erected in the vicinity. If a whole field of sugarcane was cut and stored for five days, it would lose a considerable portion of its value, and it would be difficult indeed to find a purchaser for it. The usual practice, therefore, has been to sell the sugarcane as it stands. One Collector considering this course to be opposed to the law, refused to permit it, and the consequence has been that, except for purposes of annoyance, sugarcane crops are rarely distrained in his district. A trifling alteration in the law will remedy this defect, and enable the distrainer to sell ungathered products as they stand without storing them, in cases, such as that of sugarcane, where storing would be injurious to them or is not customary.

Letter from Mr. A. R. Young, Secretary to the Government of Bengal (No. 2599, dated the 27th November 1858).

No. 2599, dated the 27th November 1858.

From—A. R. YOUNG, Esq., *Secretary to the Government of Bengal,*

To—*The Member of the Legislative Council for Bengal.*

In continuation of the letter from this office, No. 190, dated the 26th January last, I am directed to forward, for your consideration, the original papers noted on the margin, together with a copy of a minute of this date by the Lieutenant-Governor on the subject of the Bill "to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal."

Letter from the Register of the Sudder Court to the Junior Secretary to the Government of Bengal, No. 800, dated 29th May 1858, with enclosure.
Ditto to ditto, No. 910, dated 22nd June 1858, with annexure.
Ditto to ditto, No. 947, dated 29th June 1858, with enclosure.
Ditto to ditto, No. 1031, dated 14th July 1858, with enclosure.
Office memorandum from the Commissioner of Patna, No. 1239 A., dated 31st August 1858, with four enclosures.

2. The return of the original enclosures is requested when no longer required.

Minute by the Lieutenant-Governor of Bengal.

Minute by Sir F. Halliday (datedthe 27th November 1858.)

Bill for the recovery of rents.

I agree generally with Mr. Currie as to the provisions of this Bill, and I would now transmit to him the various reports which have been made regarding it, in some of which will be found important discussions on points of principle and not a few valuable suggestions on matters of detail, especially in Mr. Samuell's report, wherein also will be seen some important remarks on the law as applicable to Bhowlee tenures.

2. There is a great and very remarkable consent as to appeal among all the Natives consulted. All desire an appeal and consider any curtailment of this privilege a disadvantage and a grievance. I would yield to this undoubtedly popular feeling; giving the appeal to the Collector in cases below the value of fifty rupees, except as to matters beyond the mere questions of receipt and payment of money, on which the appeal should be to the judicial tribunal.

3. Mr. Raikes, Judge of the Sudder Court, observes that, by numerous precedents since the enactment of section XXVI, Act I of 1845, it has been determined that an auction-purchaser may eject or enhance at discretion the rents of all tenants, except those of the description specially protected by the section in question; whereas sections III and IV of the present Bill extend that protection to other classes, and thus run counter to former legislation, and to rulings of the Courts founded thereon. I apprehend, however, that the object of that part of the Bill was no other than that of Act I of 1845, namely, to declare and uphold the rights of khoodkasht and kudeemi ryots, which ryots I take to be the class intended by the expressions "hereditary ryots holding lands at fixed rates" and "resident ryots and cultivators." Perhaps the opportunity should be taken to define what has always needed definition, namely, the term "khoodkasht and kudeemi ryots." Mr. Sconce, Judge of the Sudder Court, has suggested that, instead of the terms used in sections III and IV of the Bill, there should be substituted the words "ryots having a prescriptive right of occupancy;" and he would fix twelve years as the term of uninterrupted occupancy after which a ryot should come under the description he proposes. To this I would assent, believing that in doing this we shall be discharging a heavy obligation towards the ryots, long unfulfilled by our legislation. I would also use means to show that this was the definition of a "khoodkasht or kudeemi ryot" elsewhere alluded to in our Code.

4. Mr. Sconce further proposes to declare the actual rents of such ryots permanent as to amount. But as to this I hesitate, believing it better to leave this to be determined by the new Rent Courts, as it now is in suits in the ordinary Courts for what is termed Nishust-i-Jumma. And in the enumeration of the kinds of suits to be cognizable by the new Courts, I would distinctly insert suits for settling or fixing or enhancing rents.

5. There is some variation of opinion among the officers consulted, as to the restriction put upon zemindars by section VIII of the Bill in respect to compelling the personal attendance of their ryots. Upon this I agree fully with Mr. Samuells, that, although the withdrawal of this power will be severely felt by some small zemindars whose ryots have easy means of escape from their power, yet the present system leads to such grave abuses and allows of such intolerable oppression, that it ought without doubt to be amended in the manner proposed by this Bill.

6. Nothing which is stated by any of the authorities who have reported on this Bill has altered my opinion in favour of constituting the new Courts in the hands of Collectors and Deputy Collectors, instead of Munsiffs. Deputy Collectors, very carefully chosen, will shortly be stationed over every district in the proportion of one to every three thannahs; and in the first instance, at all events, it will only be by putting the new jurisdiction into the hands of these officers, that the essential protection and security of the ryot will be provided for. Hereafter it may be possible to use the Munsiffs in this way, but not now. And to employ the Munsiffs in administering the new law at first will be to risk all its proposed advantages.

F. JAS. HALLIDAY.

The 27th November 1858.

Minute by Sir F. Halliday (dated the 27th November 1858).

I could have wished for the benefit of a report from the Board of Revenue on this important subject. But I have waited long for it, and have been obliged at last to write my opinion without it. Hereafter, should it, when received, suggest any further observations, I shall not fail to supply them.

F. J. H.

Letter from Mr. A. W. Russell, Register, Sudder Dewany Adawlut (No. 800, dated the 29th May 1858.)

No. 800, dated the 29th May 1858.

From—A. W. Russell, Esq., *Register of the Sudder Dewany Adawlut,*

To—*The Junior Secretary to the Government of Bengal.*

With reference to your letter No. 280, of the 2nd February last, I am directed to forward, on behalf of Mr. Sconce, a copy of a minute recorded by him on the Bill to "amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal."

Minute by Mr. A. Sconce, Judge, Sudder Dewany Adawlut (dated the 19th May 1858).

Minute by Mr. A. Sconce, *Judge, Sudder Dewany Adawlut, dated the 19th May 1858.*

I take it that the subject proposed for discussion and enactment in the 3rd and immediately succeeding sections of this Bill, is the most important that ever was, or I may say, that can be submitted for the consideration of the Legislature. These sections present to us the first substantial attempt to redeem the pledge undertaken by the Government in clause 1, section VIII, Regulation XVII, 1793, to "protect those classes of the people who from their situation are most helpless, and to enact laws necessary for the protection and welfare of ryots and other cultivators of the soil."

The legislation proposed in this matter naturally divides itself into two general heads,—first, the legal character or title of the occupancy of the ryot; and second, the rent at which he is liable to be assessed.

In the 3rd and 4th sections of the Bill, the nature of a ryot's occupancy is described by different designations; we have mentioned hereditary ryots, resident ryots, and all other ryots. I am not unconscious that the character of the occupancy of a ryot is in one sense very materially determined by the rent or rate of rent which he is bound to pay; but we are all familiar with the broad distinction of permanent and temporary rights of occupancy. And it seeems to me most essential to consider clearly what our language means and to define with legal exactitude the peculiar forms of the tenures for which we legislate.

In section IV, it is said every resident ryot has a right of occupancy in the land held or cultivated by him. In section III the words "hereditary ryots" are used. Is there any distinction between the word "resident" and the word "hereditary;" and if there be a distinction, to what does it amount? The right assumed to be vested in a resident ryot is of the highest value, for, paying the rent due from him, his occupancy cannot be disturbed. I suppose that the word "resident" imports permanent residence, or, in other words, hereditary occupancy, and is the English equivalent of khoodkasht or kudeemi ryot as indicated in section XXXII, Regulation XI, 1822. This right, however named, seems to be mainly founded on prescription, and perhaps the terms "prescriptive occupancy" best define the existent right and afford the best guide for testing a disputed tenure by the standard which the law recognises. The first suggestion, therefore, which I have to make, is that the terms used in sections III and IV should correspond, and that, instead of the words "hereditary" or "resident," should be substituted "having a prescriptive right of occupancy."

I do not say, however, that, in using an uniform definition, the difficulties which daily arise for adjustment and adjudication are effectually solved. Considered may not be doubtful that a khoodkasht ryot has a right of prescriptive occupancy, but prescription grows and is constituted by the effluxion of time, and thus an occupancy which, being immature and new, does not amount to a permanent right, by long recognition became eventually prescriptive. Rights, like customs, may be imperceptible in their origin and progress, which nevertheless in time we do not hesitate to characterise and to perpetuate. The last sentence in section V of this Bill appears intended to create a right of prescriptive occupancy in favour of a resident ryot with respect to land recently acquired by him. Possession and payment of rent for *three years*, supposing the tenant's right not to

Minute by Mr. A. Sconce, Judge, Sudder Dewany Adawlut (dated the 19th May 1858).

be otherwise limited by a written engagement, here create a right of occupancy. This provision, it will be seen, is confined to land newly acquired by resident ryots. Land not before held on a prescriptive tenure, becomes, after three years, included within the older land of the ryot, and subject, I suppose, to the same conditions of occupancy; and so, it seems to me, as mere occupation for a limited period restricts the proprietor's right of ouster, a similar provision should be made in favour of other ryots by reason of prolonged occupancy.

I believe that the experience of all of us shows that it is in vain to look for precisely marked distinctions between the old and recent occupancies of ryots. The term "kudeemi" is merely old khoodkasht, appears to signify the occupancy of land which is peculiarly a ryot's own, and for which others can bring no claim on an equal footing. But distinctions of a broad and general kind are sufficiently noticeable. On the one hand a kkoodkasht ryot is known by a continued occupancy, by an occupancy continued at his own will, if also by the silent sufferance of the zemindar; and on the other a temporary occupancy is most usually marked by circumstances which are incompatible with a permanent right, such as by recent and accidental acquisition, by variable occupation, or by a lease for a limited period. I should prefer, therefore, to take twelve years' occupancy, recognised by the zemindar (mainly by the receipt of rent, but possibly also by other circumstances), to constitute a right of prescriptive occupancy; except that an occupancy renewable at the discretion of the zemindar may be inferred from the express terms of a written engagement, or from the general terms of a deed taken in connection with the circumstances under which the tenure originated or was continued. Where there is no written engagement, twelve years' occupancy alone will be sufficient to guarantee a permanent right, but if there be a deed without an express condition to quit, the mere termination of the lease will not import a limited occupancy unless that be inferrible from the circumstances of the case.

Section III of the Bill determines the principle by which ryots' lands are to be assessed: there are two scales; hereditary ryots being assessable at fixed rates, and other ryots being assessable at the ordinarily prevailing rates. No doubt it is not intended that a ryot holding land under prescriptive occupancy, who shall not have been previously liable to pay rent at an uniform rate, shall be entitled to a pottah, limiting a demand which was before open to enhancement. I would say, however, that, in practice, our investigations for the determination of the amount of rent for which a ryot is liable, are rarely aided by the ascertainment of uniformity, whether as regards the fixed rates of khoodkasht ryots or the ordinary rates of other ryots. There is nothing so unsatisfactory as a professed enquiry into rates. In fact, among ryots and tenants of all classes there is little or no uniformity; and though, in the necessary nature of things, rents paid approximate in rate, it is not because a rate is followed as a standard, but because, comparing the specific assessments of individuals one with another, an average, as a matter of account, may be struck. Upon this understanding, provision, it seems to me, should be made for the regulation of the assessment of land held upon a right of prescriptive occupancy. The amount of rent in each case chargeable should be determined rather by the uniformity of previous payments than by enforcing conformity with the rent chargeable on neighbouring lands. Each man's liability should be regulated with reference to his own rights, not with reference to rights which it is not his business to maintain.

I would hold to the principle deducible from the rule inculcated in 1793. In Regulation VIII of that year, zemindars were told how they were to deal with their khoodkasht ryots. The spirit of the permanent adjustment of the Public Revenue pervaded the legal relations of zemindars and tenants. The permanent settlement was not one-sided; permanent for the landlord and not permanent for the tenant. On the contrary, the *de facto* positions of the tenants were accepted as representatives of the available assets of estates, upon which, except for special cause, zemindars could not legally encroach. In support of this statement, it is scarcely necessary that I should refer to sections LI and LX, Regulation VIII, 1793. But the thorough recognition of the then purpose of the Legislature is of immense importance, and the quotation of a familiar law may be pardoned. As to dependent talukdars, it seems clear that the *status quo* tied the hands of a zemindar. The rent payable to him before the completion of the

Minute by Mr. A. Sconce, Judge, Sudder Dewany Adawlut (dated the 19th May 1858).

settlement, that and no more, should he continue to receive, and it was expressly stipulated that, even though the revenue due by himself should have been increased, it was not legally competent to him, except upon proof of certain contingencies, to demand an increase from talukdars. So as to khoodkashtr yots. The rule with respect to them was that, except on proof of fraud, no increase should be demanded contrary to previous engagements, *unless it was shown that the rents paid within the three years preceding the settlement* had been reduced below the ordinary pergunnah rate. Here, what is remarkable is that enhancement depended upon the reduction having been made within the *last three years.* If the rent of the ryot had been levied at an uniform amount for more than three years, the assessment could not be revised. This law seems to me to furnish our best authority for defining the fixity of rents. The rule has been in force from 1793 downwards: supposing a khoodkasht ryot to have paid his rent for six years, the plea that the rate chargeable on him was too low could not be heard. In 1793 he was secured by this law, and the law cannot be less a protector to the ryot now. In 1793 the rule was that the assessment of land held under a prescriptive right of occupancy, might be revised on proof that within three years the rent had been reduced below current rates; and the principle to which practical effect was thus given, appears to be necessarily based on the admission that *the payment of a uniform rent for more than* three years established a prescriptive right to the continuance of that payment in future years. And further, I conceive that the constitutional theory of the permanent settlement did effectually embody permanence of assessment to the tenant as well as to the zemindar. This truth is too precious to be let slip. It applies to other tenants as well as to prescriptive occupants of land, but it applies also to these. The existence of the tenancy of land, distinct from that of a tenant-at-will or of a temporary lease-holder, entered into the definitive basis of the settlement. The rent assets derivable from these permanent tenancies, were the fixed assets of the settlement by which the sudder jumma of each estate was regulated; and, except upon special cause shown, it was incompetent to zemindars to enhance the rent then leviable. The contract on the part of the State enforced a contract on the part of the zemindar. One portion of the rents of an estate was assumed to be a fixed (though unknown) sum, and the limitation of the demand of the State carried with it the stipulation that the rent payable by this particular class of tenants should be adhered to by the zemindar.

The tenancy of an estate at the time of the permanent settlement was, as it is now, divisible into three broad classes. First may be enumerated the class described as dependent taluks. The tenures included in this general classification are very variously designated according to the local nomenclature prevalent in each district, but the nature of the tenure in all cases imports a hereditary occupancy at a definite rent. Second is the more subordinate class that may or may not be included in the first, the jotes of ryots holding under a prescriptive occupancy; and, third, ryots or other tenants that held only for a time. As to the first class, zemindars were declared to have no general right of enhancement. The rent then payable by the tenant was accepted as his ultimate liability. By the special and very limited conditions defined in section LI, Regulation VIII, 1793, a zemindar might show cause for raising his demand, but without such special cause the tenure of the tenant was unassailable. The same right is carried down to our own day by section XXVI, Act I of 1845, and again by section LX, Regulation VIII, 1793, as by Act I of 1845 the *existent* rights of the second class are equally respected.

It is for these reasons, I say, that the sudder jumma of the zemindar is not a constantly fixed, and the rent of the tenant a constantly increasing, quantity. Both by law are fixed, and, it seems to me it should be our most earnest duty to give effect to the spirit of the law.

There can be no difficulty as to the rent of a jotedar, holding land under a prescriptive occupancy from 1793 downwards. I do not speak only of the rate, but of the amount of rent. Rent so long paid cannot, in the spirit of the law, be open to enhancement.

The same rule should, I think, be extended to all under-tenures existing at the date of the permanent settlement; that is, I would abrogate the power reserved under special circumstances by section LI, Regulation VIII, 1793, to the zemindar, to enhance the rent of talukdars or of other tenants holding under

corresponding titles. Look at our present position. It is nearly seventy years since the settlement of 1790 was concluded. Throughout this long period, the rent of the talukdar has been unchallenged. As a matter of course, so long as an estate is not sold for arrears of revenue, after such an interval, the talukdars cannot be brought into Court; but painful instances come before us, in which sale purchasers, strangers to everybody, strange to Government, strange to the tenantry, press their special rights to enhancement under the law. It is life or death to the talukdar. For long past half a century he or his ancestors have paid a fixed rent, which rent entered originally into the basis of the permanent settlement, and suddenly a claim is made on him to pay three thousand rupees instead of one thousand. It is truly life or death to him. At most, under the law, a purchaser can be entitled to enhance only if he prove that his predecessor, the zemindar of 1790, might have demanded an increase because the *special* custom of the district allowed it, or a temporary abatement had been granted, or because it was conformable to the conditions of the tenure. But the zemindar of 1790 had foregone his advantages, and, after so great an interval, to expose a tenant to a revival of the claim which he practically felt himself unable to enforce, is to expose him to injurious peril.

Minute by Mr. A. Sconce, Judge, Sudder Dewany Adawlut (dated the 19th May 1858).

I have said that, with a prescriptive jotedar of 1790, there can be no difficulty as to prescriptive rights of occupancy of a more recent origin. It seems to me that whatever difficulty as to the right of assessment may be presented should be solved by the law, and not left to the unguided judgment of the Courts. I would propose to declare that a ryot holding land under a prescriptive right of occupancy, who shall have uniformly paid, with or without a pottah, a definite amount of rent, shall not be liable to a demand for enhancement.

Resident, permanently-occupying ryots are not beholden to zemindars for their rights. If, upon any point, we are competent to exert the sacred force of common law in this country, it is this. Labour and occupancy make the right of the prescriptive ryot. By Regulation VIII, 1793, the revision of a prescriptive jotedar's assessment was limited to reduction effected within three years only; for later titles, I propose twelve years. All ryots are not prescriptive ryots; but having defined the nature of a prescriptive ryot's tenure, we should, at the same time, define the interest which by the declared principles of the law should be assured to him.

I may not have leisure to discuss other portions of this excellent Bill, but the earlier sections form a detached subject, and to this, for the present, I confine myself. With respect to the temporary and limited tenures, I would only request attention to the concluding portion of section XI, which provides that no ryots shall, under any circumstances, be liable to any enhancement of rent in excess of the rates specified in section III,—that is, customary pergunnah rates. Now, the rule asserted in section XXVI, Act I of 1845, is that a zemindar may enhance "at discretion;" and as necessarily the limit of a local rate is inconsistent with a discretionary demand, the proposal in the Bill will supersede the present law.

No. 910, dated the 22nd June 1858.

From—A. W. Russell, Esq., *Register of the Sudder Dewanny Adawlut,*
To—*The Junior Secretary to the Government of Bengal.*

Letter from Mr. A. W. Russell, Register, Sudder Dewany Adawlut (No. 910, dated the 22nd June 1858).

With reference to your letter No. 280, of the 3rd February last, I am directed to forward, on behalf of Mr. Raikes, a copy of a minute recorded by him on the Bill "to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal."

Minute by Mr. H. T. Raikes, *Judge, Sudder Dewany Adawlut, dated 17th June 1858.*

Minute by Mr. H. T. Raikes, Judge, Sudder Dewany Adawlut (dated the 17th June 1858).

So far as this Bill refers to the recovery of rents by suit and distraint, it is a great improvement upon the present law.

It may, I think, be reasonably doubted whether the Collectors and Deputy Collectors at out-stations will be able to perform their duties with the necessary celerity, and whether the local Courts, which will alone have jurisdiction

Minute by Mr. H. T. Raikes, Judge, Sudder Dewany Adawlut (dated the 17th June 1858).

to try the facts, are quite competent to determine the difficult and intricate questions which suits for enhancement sometimes involve; but there can be no question that the system, as proposed, will ensure some substantial protection to the ryots and under-tenants, and any impediment which the Bill may introduce to the speedy recovery of rents, will be felt by the landholders, who, as a class, have sufficient influence to make themselves heard on the subject.

I do not, however, see my way quite so clearly through the preliminary sections of the Bill, declaratory of the right of ryots and cultivators to hold their lands *in perpetuity* and at *fixed rates.*

Section IV of that Bill declares that "every resident ryot and cultivator has a right of occupancy in the land held or cultivated by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same;" while section III not only affirms that "hereditary ryots holding lands at fixed rates of rents are entitled to receive pottahs at those rates," but also prescribes that all other ryots and cultivators of land are entitled to receive pottahs at the pergunnah rates or at the customary rates of similar land in the neighbourhood, and goes on to provide that "the above rules are applicable not only to the first grant of pottahs, but also to the renewal (where right of renewal exists) of pottahs which may expire or which may become cancelled in consequence of the *sale* of the tenure or estate in which the land is situate for *arrears of rent or revenue.*"

I need not expatiate on the difficulty which now exists for regulating rates by the standard here prescribed, and which would in itself be a constant and never-failing cause of dispute likely to involve every zemindar in litigation with his tenantry, but I would refer only to the utter impossibility of reconciling these provisions of the new Bill with those which have been in force for the last seventeen years under section XXVI, Act I of 1845, and section XXXVI, Act XII of 1841.

It is well known that the section I allude to has been held by the Courts of law through numerous precedents to apply to ryots and cultivators as well as to intermediate tenures, with the exception of those specially exempted in the subsequent clauses; and as this section of the Sale Law is unrepealed by the present Bill, should it be passed as proposed, we shall have the older law conferring upon auction-purchasers the privileges of *enhancing* the rents of all under-tenures at *discretion*, and of *ejecting* the tenants thereof in the face of a later declaration in the new Bill that every resident ryot and cultivator is entitled to hold his land so long as he pays the rent payable for it, and that that rent, when once fixed and determined by pottah at certain rates, is unalterable for ever.

I cannot suppose so important a provision of the Sale Law has been overlooked, and I therefore conjecture that the framer of the Bill has read the 26th section as applying only to intermediate tenures, and considered that allusion to its provisions would be out of place in a Bill declaratory only of the rights of the *cultivators;* but the Courts of Law have given a different construction to this section, and one which calls for the attention of the Legislature, not only because the provisions of the two enactments will thus be made inconsistent with each other, but because permaneney of tenure at fixed rates (except for the exempted classes) is directly opposed in principle to what has been for many years the *recognised* rights of auction-purchasers under the Sale Laws.

The right which auction-purchasers have been held to acquire under those laws, is the right to raise the rents of the cultivators open to enhancement by *competition*, and it is obvious that, if rates are determinable by a particular standard only, when that standard is once reached, enhancement is illegal and the power to raise the rent by competitive rates no longer exists. An auction-purchaser, therefore, acquiring an estate in which the rents had been already regulated on the principle of the Bill, could neither enhance at discretion nor eject, and must content himself with the rents paid to his predecessor.

My own opinion is that the principle of the *present* law should not be changed after so many years' continuance. The zemindar, as constituted by the perpetual settlement, is the party entitled to derive benefit from any rise in the value of land consequent on the increase in the price of landed products; this he cannot receive if rates are not liable to increase, while a permanent fal[illegible] in

the value of productions must compel him to *lower* the rates, or his land will be thrown out of cultivation. To make the ryot's tenure permanent and his rent *fixed*, is to aggrandise the ryot at the expense of the zemindar, and is totally opposed to the *system* which recent legislation, through the Sale Laws, has introduced into most zemindaries in Bengal.

Minute by Mr. H. T. Raikes, Judge, Sudder Dewany Adawlut (dated the 17th June 1858).

No. 947, dated the 29th June 1858.

From—A. W. Russell, Esq., *Register of the Sudder Dewany Adawlut,*
To—*The Junior Secretary to the Government of Bengal.*

Letter from Mr. A. W. Russell, Register, Sudder Dewany Adawlut (No. 947, dated the 29th June 1858).

With reference to your letter No. 280, of the 3rd February last, I am directed by the Court to forward, for the information of His Honour the Lieutenant-Governor of Bengal, the accompanying statement of the opinions of the local Judges on the Bill "to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal."

Statement showing the Opinions of the local Judges on the Bill to amend the law relating to the Recovery of Rent in the Presidency of Fort William in Bengal.

Statement of Opinions of local Judges on the Bill.

Sarun (*Mr. G. L. Martin, Judge*).—Approves generally. "It might be advisable to stipulate in section VII that receipts should not only specify the periods on account of which the rent is paid, but should be signed by the zemindar, his representative, or authorized agent for receiving the same.

Mr. G. L. Martin, —Sarun.

"During my residence in this zillah and Tirhoot, I have frequently observed that the mode of granting receipts to ryots is not on separate pieces of paper in the usual form of an acknowledgment, but on a single slip which is headed with the ryot's name, and below that the several payments made in the year are entered with the dates, but the signature of the receiver is seldom if ever affixed, and the result of this practice, which extensively prevails, is that, when tendered as exhibits in suits, they are easily repudiated and extremely difficult to prove. Of course it is optional with the ryots to accept an acknowledgment which can so easily be denied, but in the main they are so entirely at the mercy of the landlord, farmer, or agent, and often so ignorant, they cannot help themselves.

"The practice referred to appears to me to proceed from much the same sort of feeling which is often shown by proprietors and farmers in their reluctance to grant 'farugs' or acquittances.

"Under the proposed Bill the limit at which the judgments of the Courts are to be final is fifty rupees. As far as my experience as a Collector enables me to judge, I think it might advantageously be fixed at one hundred rupees.

"I presume it is intended that section CXXXIII should meet suits brought obviously without foundation and with the view of harassing defendants."

Behar (*Mr. T. C. Trotier, Judge*).—If the Act increases the jurisdiction and work of the Collector, it, at the same time, inevitably swells the duties of the Judge; but I question whether it is done in a way which will give as much satisfaction to the people.

Mr. T. C. Trotter, —Behar.

For by Regulation VIII, 1831, section VIII, not only were great inducements held out for the institution of regular suits, which, when instituted, did not, to any great extent, revive in the form of appeals; but, by section IV, the Collector's order was deemed final in all cases connected with arrears or exactions of rent, except in instances where there had been a departure from Regulation. Now this privilege under section VIII, and which brought about careful enquiry at all events, is removed; and as a result all suits of the above nature being forced into the Revenue Court—the fiat of the Collector, which was final, becoming only limited—the consequence in almost every case will be an appeal to the Civil Court. By such means speedier decisions may be obtained, but without ensuring the enquiry which gave such satisfactory result

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Mr. T. C. Trotter, —Behar.

If, notwithstanding, it be ruled that the Revenue Court is the one best adapted for the disposal of all such cases as those referred to, I would suggest that the Collector should not be shorn of his former power, and that his order should be final to any amount, and only open to appeal on the grounds cited in section CXLI.

Mr. H. Atherton, —Tirhoot.

Tirhoot (*Mr. H. Atherton, late Offg. Judge*).—I was unable to submit my report on the Rent Bill when at Tirhoot, and I now beg to offer some remarks on several of its provisions. I beg to observe that I have long attentively studied the position of the ryot and the zemindar; that I am convinced that the rent payable by the ryot who has not obtained a pottah entitling him to hold at fixed rates, depends solely on the competition for the land being high when there are many competitors for it, and low when there are few; and that, from the poverty and helplessness of the ryot and the power of the zemindar, there can be no security for the ryot until his rights are recorded by the Government, and he is permitted to pay his rent if he please direct to the Government treasury. I consider the proposed Bill, as far as it goes in favour of the ryot, good, but that it does not go far enough; while, on the other hand, I am persuaded that in some respects the Bill will put the ryot in a worse position than he is already, since, once wrongly condemned to pay a balance below fifty rupees, he will have no redress.

Sections II and III of the Bill declare what has been long since declared, that the ryot is entitled to a pottah, but few of the ryots entitled to hold lands at fixed rates, have any documentary proof of such right. Every year adds to the difficulty of proving such right where it exists, and therefore I would suggest that all ryots claiming such right, should be required within a certain time to sue in the event of no pottah being given them by the zemindar, a register being opened by the Collector to record all the holders of lands at fixed rates in every mehal in the district.

Section VII supposes that the ryot is capable of contesting the demand of his zemindar. He cannot, generally speaking, do so from his poverty and from the fact of the zemindar or his agent, when inclined to be unjust, being able to secure any amount of evidence against the ryot. Nothing, in my opinion, can protect the ryot against oppression but the registration of his pottah in the Collector's office, with permission to pay the rent of the year in one sum into the Collector's hands. The ryot should be required to give in a petition on eight-anna stamp paper to the Collector with his payment, and would never do this unless sure that he could not trust his superior with the money, and in this case the zemindar would deserve to be put to the trouble of getting the money from the Collector by a petition on stamp paper, the value of which would reimburse the Government for thus acting in a measure as the zemindar's treasurer.

Section VIII of the Bill is most just. Force is rarely needed to secure the attendance of a ryot who knows that he is well off under a good zemindar.

Section IX.—The party illegally confining the ryot should be likewise subjected to a period of confinement himself in the Government jail.

Section X.—An excellent provision, thus making the Collector the channel for issuing the notice of claims to enhanced rent.

Section XII.—Ditto, as regards the relinquishment of land.

Section XIX.—A very proper provision enabling the zemindar to turn out the farmer on the expiration of his lease, who now occasionally refuses to surrender possession and claims possession under Act IV of 1840.

Section XXIII.—The latter part of this section is bad. A zemindar will always produce proof in support of his claim to more than the pergunnah rate. The pergunnah rate is a fair one, because it always rises and falls with the demand for land, and it is as just that the zemindar should have a high rate of rent when his land is in great demand, as that he should be liable to lose his tenant altogether when he, the ryot, thinks proper to relinquish his land, and no one else needs it.

Section LXXXIV.—The party taking charge of the property should be rewarded for his trouble.

Section LXXXIX.—Against whom is the action to be brought?

Statement of Opinions of local Judges on the Bill.

Mr. H. Atherton, —Tirhoot.

Section XCIX.—An excellent provision if the ryot can register his pottah in the Collector's office; but, unless the pottah be registered, the kabooliut will be fabricated, when needed, by the zemindar, and the denial of the poor ryot will rarely protect him.

Section CVII.—It will never do to allow the Civil Court Ameen to be applied to. He will have no leisure for the work and be unable to attend to it.

Section CXIX.—No notice on sale—this puts the sale entirely in the power of the Ameen.

Section CXLI.—Every Native I have spoken to believes that gross oppression will be the consequence of allowing no appeal against decrees not exceeding fifty rupees. I refer the Court to my report No. 146 of the 18th July 1855, paragraph 3, on the Small Cause Act in which the same opinion was expressed. If this rule be passed, it will be absolutely necessary to allow the ryot to deposit his yearly rent in the Collector's hands, for receipts for payments are constantly refused, and if the ryot cannot be allowed to deposit his rent, his only course will be to refuse payment altogether until he has had a decree given against him, which is a common practice now, simply from the impossibility of getting receipts from the zemindar or his agent.

Mr. E. Jenkins,— Tirhoot.

Tirhoot (*Mr. E. Jenkins, Additional Judge*).—I am at a loss to understand where lies the justice or necessity of restricting third parties only from all right of appeal. Their interests may often be seriously endangered by the insidious machinations of the principal parties to a suit acting in collusion, and should a Collector take an unfavourable view of their objections, his decision is final, though it is not at all according to reason that a Collector's opinion regarding the rights of third parties should always be without error and not open, as all human judgments are believed to be, to correction.

Again, with regard to the provisions of sections CXXXIX to CXLIV, I do not sufficiently see the advantage of two channels for appeal being provided, one to the Revenue Commissioner in respect to all orders of the Collectors, &c., and the other to the Civil Judge as regards all their judgments. It may and will happen that the Judge, in disposing of an appeal on a judgment, will record remarks virtually tantamount to reversing the decision of the Commissioner, or at least calling its correctness seriously into question.

The provision which constitutes the Court of the Zillah Judge the only Court of appeal for all suits above the value of fifty rupees, seems to me likewise to be injudicious, inasmuch as it will throw an enormous amount of unnecessary work on the Judge, whose time already is so much occupied with the disposal of every kind of criminal appeal, that it is scarcely possible for him to dispose of promptly all the commitments that constantly require his earnest attention. As at present, I would suggest that Principal Sudder Ameens might dispose of the appeals on judgments for sums not exceeding one thousand rupees. On suits above that sum, the appeal might lie to the Civil Judge.

Mr. W. H. Brodhurst,— Purneah.

Purneah (*Mr. W. H. Brodhurst, Offg. Judge*).—Approves wholly "The ryot's rights will be better defined and secured than they have been. And the power of the landlord, although reduced, will still be quite sufficient for the purpose for which it was granted."

Mr. F. A. Glover, —Rungpore.

Rungpore (*Mr. F. A. Glover, Offg. Judge*).—Approves a measure which will in some degree check the landholder's long career of oppression and mismanagement, and at the same time lay down some fixed principles regarding tenants' rights.

Sections II to VII of the proposed law define the tenant's right of occupancy; they are good so far as they go, but they leave the under-tenant, the holder of a sursuree jote, as unprotected as heretofore. I think that something should be done for this very large class of tenants. In this district many of them have held their lands for many years from father to son, have paid their rent regularly, and have built houses on the land, still they have no right of occupancy, but are liable to be ousted (unless they have been fortunate enough to secure a lease for a term of years) at the caprice of the landholder. I do not

Statement of Opinions of local Judges on the Bill.

Mr. F. A. Glover, —Rungpore.

see why any difference should be made between these men and other resident cultivators; they should both have rights of occupancy so long as they paid their rents.

Section VIII is a vast improvement on the old law. The oppression practised by the landholders in this particular is enormous; they can bring to the verge of ruin any one whom they may have a spite against by summoning him to their cutcherries on the pretence that he is in balance, and keeping him, in what is actual duress, away from his employment: no private individual should hold such irresponsible powers.

I venture to disapprove of section XII. The Regulation prevents a landlord from ousting a tenant except on proved arrear; and I do not see why the tenant should be permitted to throw up his land whenever it suits his convenience to do so; both parties should be equally kept to their contract, and the ryot should not be allowed to void his engagement merely because he finds it less profitable than he supposed it to be when he entered into it; he should pay rent till his lease expires. Of course these remarks do not apply to ryots who hold without engagements for a term of years.

Section XVII vests in the Revenue authorities the power of determining suits formerly cognizable only in the Civil Court. I think this an improvement; such cases more properly belong to a Collector's office, and the alteration of the law will relieve the heavy files of the Civil Court.

The remaining sections up to section XCVIII refer to the forms of procedure in such cases, and do not call for any remark.

Section XCIX does not, in my opinion, go far enough. I would allow no landholder to distrain without first appearing before the Collector or other constituted authority and making oath as to the truth of the arrear. More oppression is committed under the power of distraint than is conceivable by any one who has not had a long and personal acquaintance with the way in which distraint for rent is managed in the mofussil. I venture to say that in nine cases out of ten the arrear is fictitious. No ryot, if really in arrears, would refuse to enter into arrangements with his landlord. A ryot can have no security either in person or property so long as it is in his zemindar's power to distrain his goods, or arrest him, merely because he, the zemindar, chooses to allege that a balance is due. The privilege of having the distraint withdrawn on giving security to bring a suit against the distrainer is worthless to a man who lives from hand to mouth, and would rather put up with the first loss, if it spared him from absolute ruin, than go to law with a man who possesses so many ways of oppressing him, and who would be sure in the end to be victorious. I would insist on the landholder first proving his demand rather than call upon the ryot, who is incomparably the weaker party of the two, to prove a negative. If inconvenience must be borne, surely it is better that it should be incurred by the party on whom it would press lightest, and not by one to whom it would speedily become ruin. I have seen too much of the tyranny and rascality exercised under the guise of law in this matter of distraint, ever to approve of a regulation that continues such powers in the hands of people so utterly unworthy of possessing them.

Mr. W. Tayler,—Mymensing.

Mymensing (*Mr. W. Tayler, Judge*).—On taking charge of his office found the call for an opinion urgently due and was "unable to give sufficient time to a careful consideration of so voluminous a Bill without causing inconvenient delay.

"I will therefore content myself with observing that, after a cursory perusal of the Bill, I am disposed to think that its provisions are generally well considered.

"I must confess, however, that I should have liked to see the zemindar's powers of distraint either wholly abrogated or placed under still more stringent restrictions. I know not to what extent the power may be abused in Bengal, but in Behar it is seldom resorted to except for purposes of injury and oppression."

Mr. M. Shawe,—Sylhet.

Sylhet (*Mr. M. Shawe, Judge*).—Withdrawing the power from the landlords of compelling the attendance of their tenants, would be considered a hard-

ship, as without some such power no landlord would be able to collect rent, more especially in this district where the ryots are so notoriously poor.

Statement of Opinions of local Judges on the Bill.

Mr. M. Shawe,—Sylhet.

Section XX.—If a landlord is unable to measure his land when a ryot or cultivator refuses to attend and point out the land, the landlord will find it difficult to collect rent.

Section LXXI.—There is no objection to issuing both processes at once.

Section LXXVII.—The period allowed for the execution of the decree appears to be too short.

Section LXXVIII.—Six months' imprisonment of a debtor in default of payment of an amount exceeding fifty rupees may be considered insufficient—as the debtor, in order to evade payment, might conceal his property and voluntarily undergo imprisonment. The rules regarding the execution of the Civil Court decrees might be made applicable to the execution of decrees under this Act.

Section LXXXV.—A third party might appear either in person or by mukhtar.

Section LXXXIX.—It will be too *expensive* a process for a person sustaining damage by the illegal sale of his property to institute an action in the Civil Court; it is therefore advisable that a summary investigation should be held when any person complains of irregularity in the conduct of a sale.

Section XCI.—The claim of a third party referred to in this section, may be enquired into under the general rules for the adjudication of the claim of a third party in the Civil Court.

Sections CI to CXXX.—The provisions of these sections are similar to those of Regulation V, 1812, which are considered as oppressive on the ryots and cultivators.

Section CXLI.—There should perhaps be an appeal to the proper authority without reference to the value of the property claimed.

Dacca (*Mr. R. Abercrombie, Judge*).—Approves all but section VIII, which "takes away from a landlord the power he has hitherto possessed of compelling the attendance of a ryot for adjustment of rent or *any other purpose*. In a large zemindari, suits would have to be instituted by hundreds and thousands, and the zemindar would have to wait months for his rent. Many who have not cash at their command, would have to borrow at high rates of interest to pay the Government revenue and save their estates from being sold for arrears."

Mr. R. Abercrombie,—Dacca.

Backergunge (*Mr. F. B. Kemp, Judge*).—Approves as good in its objects inasmuch as it recognizes the right of the ryot, prevents illegal execution and extortion, and amends the law of distraint.

Mr. F. B. Kemp,—Backergunge.

Section II rules "that every ryot and cultivator of the soil is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable, a pottah, &c." I would make this provision imperative, and a regis-
try of pottahs should be kept up.

Section III.—This is a good section. I must, however, observe that there is no established pergunnah rate in this district.

Section VII.—I would add "with costs of suit."

Section VIII.—This will be an unpopular section with the zemindars, and I much fear that it will be evaded by them. The protection afforded to the ryot is incalculable. The terms of this section should be promulgated with every publicity.

Section IX.—I would add with "costs of suit."

Section X.—I conclude that the term "under-tenant" used in this section, includes every grade of intermediate tenant between the zemindar or independent talukdar and the cultivator of the land. I would add to the section the following—"which latter process (that is, when personal service is impracticable) shall be deemed and taken to be a sufficient service of the notification in question."

Section XII.—I would extend the period within which notice of relinquishment must be given to three months. The provisions contained in the latter part of this section are admirable; at present it is almost impossible for a ryot to serve notice of relinquishment upon his landlord.

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SECTION XIII.—I would add "and be liable to interest at the rate of twelve per cent. per annum."

MR. F. B. KEMP,—Backergunge.

SECTION XX.—I would add "provided that all increase or decrease resulting from the measurement be noted in the pottah of the ryot or cultivator and a copy of the measurement chittah be furnished to him."

SECTION XXIV.—I would add "unless good cause can be shown," such as minority, &c., but under no circumstances should the period be more than twelve years.

SECTION XXXIV.—I would extend the period from ten to fifteen days.

SECTION XLIX.—I would allow the fees of agents to be charged as part of the costs of suit in all cases in which the Collector certifies that the employment of an agent was necessary.

SECTION LV.—The proof required under this section must be good proof.

SECTION LXXVII.—I would add after the word "judgment," "or from the date of the last previous application for execution."

SECTION LXXXIV.—I would extend the period from ten to fifteen days.

SECTION LXXXV.—With reference to the prejudices of the Natives in the matter of oaths or other solemn affirmations, this section will be very unpopular. The third party should be permitted to appear in person or by agent.

The same remarks apply to section XCI.

SECTION CII.—I would omit the words "at the time." Amongst the witnesses to the service of the written demand, should in all cases be the chowkidar of the village, or other police officer.

SECTION CXVIII.—Penalty for disobedience should be added.

SECTION CXXIII.—I would add "with costs of suit."

MESSRS. G. FLETCHER, and E. RADCLIFFE,—Chittagong.

CHITTAGONG—JOINT REPORT. (*Mr. G. Fletcher, Judge, and Mr. E. Radcliffe, Additional Judge*).—In pursuance of the instructions of the Court's circular, dated the 15th February last, No. 4, we have the honour to submit the following report of our joint opinion on the provisions of the Bill "to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal."

In the first place, we would beg to record our conviction that the Bill does provide, in almost every particular of which it treats, a material improvement upon the existing law.

Not observing any provision for the recovery of damages, or for any penalty whatever for extorting engagements to pay rent, we would suggest consideration whether the enactment of such provision does not come within the scope of the Bill.

In sections XXXV and XLV we would suggest the introduction, in the former, between the words "attendance" and "the"—and in the latter between the words "day" and "and"—of the saving clause: "provided the defendant be not a Hindu or Mahomedan woman of a rank or quality which according to the manners and customs of the country render it improper for her to appear in a Court of Justice."

In section LXV it might be an improvement to substitute for th[illegible] "refuse or delay to grant the same" the words "refuse to grant the [illegible] omit to deliver it within a reasonable term to be fixed in the decree."

There would appear to be a misprint or clerical error in the second m[illegible] abstract of section LXVII, inasmuch as the section does not pro[illegible] "punishment for obstructing execution."

We fail to see the desirableness of fixing, as provided by section L[illegible] an absolute limit of three years from the date of judgment as that [illegible] which no process of execution shall be issued. We should prefer to [illegible] three years counted from the date of the latest order upon the last m[illegible] execution.

In section LXXVIII it might be well to add after the words "[illegible] full amount specified therein" the words "or the judgment-creditor shall apply for his release."

In addition to the provisions embodied in sections LXXXV and LXXXVI for the preferment and adjudication of claims by third parties to moveable property taken in execution, we would propose that, when third parties were

prevented by sufficient causes from preferring their claims to the Collector before the sale, they should have the same remedy as is provided by section LXXVIII for parties against whom the Collector has decided.

We would desire to have the same remedy made available to third parties claiming to be the proprietors and lawful possessors of transferable tenures sold in execution, who had been prevented by sufficient causes from applying to the Collector or to stay the sale of the tenures.

We would respectfully urge the expediency of enforcing the valuable prohibition contained in the last clause of section CI by the enactment of a penalty for contravening the same.

To section CIV we should wish to have added a provision for the levy of heavy damages from persons who might, in the exercise of the power of entry, enter the apartments of women, which, by the usage of the country, are considered private, without due notice given for the removal of the occupants, and furnishing means for their removal in a suitable manner.

In section CXVI we would introduce a provision for the realization from the defaulter, to make good his bid, of the amount of any difference between that bid and any smaller sum for which the property might be resold. The deficit might be made leviable by any process legal for the execution of a decree and should be appropriated to the satisfaction or reduction of the judgment-debt.

Being unable to recognise any just ground for the distinction drawn in section CXLI between cases where the amount sued for or the value of the property claimed does not exceed fifty rupees, and those where such amount or value does exceed that sum, we should prefer to give to every party dissatisfied with any order of a Collector under sections XVII and XVIII the right of appeal to the Judge under the rules prescribed in section CXLV.

CUTTACK (*Mr. J. Ward, Judge*).—The object sought by the Bill is to benefit the ryots by conferring certain defined rights on them with a view to free them from extortion and oppression. I fear that this object will not be attained thereby: *1st*, the law deprives them of a right enjoyed and prized by them heretofore, namely, the right of appeal in cases below fifty rupees. There are so few ryots in this province who pay a yearly rent exceeding this sum of fifty rupees, that nearly all the ryots of Orissa would be deprived of a natural right enjoyed by every other class of the community. *2nd*, I see no rule laid down making defined jurisdictions for uncovenanted Deputy Collectors conterminous with those of the Munsiffs. Unless that be done the ryots would not be benefited; they would still have to travel to the sudder stations, and then, in questions of right to enhance rent or of titles to land or in cases exceeding fifty rupees, they might afterwards have to travel a hundred miles to appeal their cases to the Judge. I instance a ryot near the Soobunreeka river; he would have to prosecute his case before the Collector of Balasore, distant thirty-three miles, and then appeal to the Judge, who resides at a distance of a hundred and three miles from Balasore.

I therefore venture to suggest an improvement to the law with a view to benefit the ryots and yet not incur the increased expenditure of stationing a Deputy Collector close to each Munsiff. I would allow all summary suits to be brought before the Munsiffs on an eight-anna stamp paper, to be decided by them under the rules laid down in this proposed law.

The pay of Deputy Collectors varies from two hundred to five hundred, that of Munsiffs one hundred to one hundred and fifty. I would therefore appoint a few more Munsiffs and would allow appeals to the Judge on a stamp of eight annas. The Judge would not be overwhelmed with work, as such cases would not frequently be appealed and would quickly be revised and disposed of.

At present numbers of cases decided summarily by the Collectors, are decided in regular suits by the Munsiffs, of which a few only are appealed to the Judge; but under the proposed law every appeal from all the Collectors would be at once made to the Judge, whose time would be partly withdrawn from more important cases.

I refer to a few sections. In section II, I would have the boundaries inserted in the pottahs, and would prescribe a punishment for land-owners granting two leases for the same land to different parties, as is frequently done.

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MR. J. WARD,—Cuttack.

SECTION VII.—I would double the penalty.

SECTION VIII.—I object to this looking at ryots as they are, not as what they ought to be. They must still be made to attend at the zemindar's office to settle accounts, renew leases, &c. It does not, from long custom, appear to the ryots to be oppressive to make them so attend. Section IX prescribes the punishment to landholders who abuse their privilege.

SECTIONS XIII and XIV.—Zemindars sometimes refuse the tendered rent, wishing to oust ryots from well-tilled plots of land. I would allow ryots to demand a certificate from the Collector, producing the money so tendered and refused by the landholder.

SECTION LXXII.—Agricultural instruments and oxen for ploughing should not be sold.

SECTION LXXXV and XCI.—Parties should not, of necessity, be put on their oaths.

CI.—A severe penalty is required to punish parties preventing ryots from storing their own crops.

SECTION CIV.—The usual rules about females might be noticed.

SECTION CIX.—The hour of the day should be stated.

SECTION CXVII and CXX.—"Ten per cent." seems too high a rate.

MR E. LAUTOUR,—24-Pergunnahs.

TWENTY-FOUR PERGUNNAHS (*Mr. E. Lautour, Judge*).—The great evil at present is the general resort to forged instruments; forged kabooliuts on the one hand, forged receipts on the other.

The present law will not reach this primary evil, and with reference to the pottahs, kabooliuts, and receipts, we ought to substitute the cheque-book system.

The left-hand side would represent the kabooliut in the one case and the zemindar's ground of title: the pottah would be on the right hand side; and the distinctive seal or other distinction mark would be divided between the two documents bearing a numerical series.

So of receipts. What are the rubbishy bits of paper as evidential exhibits, which the zemindar may repudiate or his ryot forge, and either of which is done daily? This would be checked by the cheque-book system.

NOTE.

The receipts are customarily given as on account being credited to hal-bakayah, and the account is never cleared. The zemindar's object is always to make his ryots out defaulters, so as to evict them at pleasure. The jumma-wasil-bakees no longer being filed; there is no check of any description in this respect.

Again, the law should provide for tender of payment into Court whenever a zemindar refuses to receive the rent. I have cases where that is systematically going on, partly to harass the under-tenant and oppress him with law expenses, and partly to get a decree upon which to found proceedings in eviction. In Shahabad this was the method taken invariably by the Dumraon Rajah to evict his mocuraridars for value.

Here it goes on in the Sunderbunds, where a grantee is systematically adopting these same tactics to eject his gantidar, and his method is to refuse rents and institute oppressive Act VII suits in the Collectorate, setting on foot the usual consequent civil suits.

Numerous cases are always occurring in which the greatest boon would be conceded if parties were allowed to pay into deposit to the credit of the zemindar any sums the zemindar refuses to receive. Notice would issue to the mukhtar verbally (such notice being notice to his principal) to take out the money: if he refused to do so, it could be returned to the depositor and save him at least from a vindictive action.

Where there was no mukhtar, notice would issue in the usual manner.

I have made many enquiries as to the effect of this law by reason of the limitation of jurisdiction to the Collector's office. The universal sentiment of the people condemns it. Those Courts are in especially *hadodour*. I was not prepared for this; I knew that they were corrupt as every Court is more or less, but the people have no confidence in them. Any one is a mukhtar in those Courts, and it is undoubtedly true that no respectable pleader will enter those Courts even with a double retaining fee, and at present about a moiety of the cases are instituted in the Civil Courts in spite of their cumbrous procedure. There at least we have regularity and certain procedure and a bar of a certain character. The Civil Courts are on the spot. The Collector may be a centre of a diameter of sixty, forty, or twenty miles, and as a Court it is a

Court of inferior judicial character. Why drive the people into this Court if they would rather not go there, or why, by closing the Civil Courts, swamp the Collector's Courts?

MR. E. LAUTOUR,—24-Pergunnahs.

I am of opinion that to give this beneficial law full scope, the mofussil Courts should be empowered to try all cases of rent within their jurisdiction (three hundred rupees) summarily, and all other cases as in section XVIII within similar limits.

With reference to section XXI, I would abolish the *nullum tempus* Act, section X, Regulation XIX, 1793. Are we never to complete titles by prescription? That Act is a disgrace to our Statute Book in 1858.

I am inclined to think that all appeals should be abolished, leaving parties to set aside summary awards in every case by regular suits. Certain am I that, if we are to have a limit of fifty rupees, then $\frac{9}{10}$ths of the orders will not be appealable, but justice requires rather that every unjust order should be open; and to prevent litigation I would do away with the revenue appeals and substitute a civil suit in every case, limited in the pleadings to plaint and answer and examination of parties. No Court can be incorrupt on such salaries as are paid at present. Corruption is a necessity of service. The ministerial officers are on salaries of from one to seven rupees; and so long as this is so, what Legislature dare make any order of such Courts final? The great bulk of the ministerial amlah of the subordinate Civil Courts are on salaries below the wages of a sweeper and without any claim to pension. Honesty to them is the worst of investments.

All purchasers (alienees for value) of transferable titles should be allowed to save the dominant tenure by payment into Court. The Sudder Dewany Adawlut have held that a dur-putnidar for value is not entitled to tender payment of the defaulting putni balance to save the putni from sale under sections XIII and XIV, Regulation VII, 1819, and further, I think, that heritable jote jummas may not be transferred without the consent of the zemindar. I would meet these two cases in this law, and allow both, and also provide for cases where the zemindar refuses to make registrations of alienations of alienable titles.

The alterations I would suggest are—

(1) Concurrent jurisdiction of Civil Court (summary).
(2) The introduction of cheque-book pottahs, kabuliuts, and receipts.
(3) Power to pay into Court on recusance of zemindar to give receipts or receive rent.
(4) Power to intermediate alienees to preserve their tenures by payment of the arrears due by the dominant tenant.
(5) Right of summary suit to compel registration of alienations.
(6) Right to sell jote jumas interests, unless specially prohibited by the lease covenant.
(7) Abolition of appeal.
(8) Institution of regular suits "to remain open under every circumstance irrespective of amount."

JESSORE (*Mr. W. S. Seton-Karr, Offg. Judge*).—The following remarks occurs to me while carefully perusing the draft Act for the realization of arrear of rent, and they were submitted to His Honour the Lieutenant-Governor of Bengal in the month of January last. With some additions and modification which have been carefully considered, they are now forwarded in reply to the Court's circular dated the 15th of February last.

MR. W. S. SETON-KARR,—Jessore.

The general scope of the Act appears to me excellent and well calculated to elevate the position and to consolidate the rights of the agricultural population of Bengal.

The various points which I venture to think open to revision or amendment, have been noted *seriatim* from section III to section CXLV.

As regards the general scope and effect of the law, it is tolerably clear that, as it stands at present, it will entirely withdraw from the jurisdiction of Native Judges a considerable class of cases known as the regular suits for arrears of rent, or *baki khajana*, the regular suits for the reversal of summary awards (section XVII with its clauses), suits for damages on account of illegal attachment, and suits brought to fix rent and known as *takarrar-i-jumma*.

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Mr. W S Seton-Karr,—Jessore.

The time for bringing these suits will be greatly reduced. A zemindar will have to sue within three years, as I read the law, instead of twelve years as now, and may have to put up with the loss of all arrears arising out of bad management, temporary difficulties, quarrels with ryots or middlemen, bad seasons, and the like. I am afraid this curtailment will be severely felt, and may perhaps inflict hardships on the zemindar. I would gladly see the limit for arrears of rent, but for arrears of rent *only*, extended to *six* years; for I think three years as much too short, as I think twelve years, the present limit, unreasonably long. Then as to the jurisdiction. There will ordinarily be three, or at most four, places in a district where such suits can be tried,—that is, the head-quarters of the station, and the two or three sub-divisions where Deputy Collectors are situated, instead of some ten or eleven Munsiffs' Courts, as at present.

I am generally satisfied with the working of the Munsiffs' Courts, except as to the time taken to get a suit through such a Court, which time might easily be shortened if the procedure were amended, as it is in this Bill, and I do not underrate the advantage of a ryot having a Court open to him within ten miles of his house, as is now generally the case. Still I should not attach so very much importance to the additional distance which the ryot will have to travel to bring his suit, or to defend his rights, as I think any slight inconvenience in this respect might be counterbalanced by the advantage of the more uniform and simple jurisdiction under which all cases, in any way connected with rent, will be tried under the new law, *provided due means be taken to ensure uniformity and celerity*. But I have considerable doubts whether two or three new Courts will be able to get through the work of ten or twelve, especially if new kinds of claims regarding pottahs and kabuliuts spring up.

The provision for the recording of issues as in section XLVI, will certainly require to be very carefully watched. The vakeels who plead in the Civil Courts are sometimes unwilling or incapable of putting the real point fairly in issue, and the Judge has to do it himself. What sort of issues will a mukhtar or mere agent, occasionally practising in the Collectorate, intent on fraud, or on creating confusion where none exists, and on increasing it where it does, be likely to give? and if there be two or three claimants to rent from the same land or the same parties, there may perhaps be as much delay under the new law as there has been under the old. By this I do not mean to say that the experiment should not be tried. All I wish to point out is that, with indifferent mukhtars and inexperienced Deputy Collectors, remote from supervision, the provisions regarding the issues and the attendance of witnesses (section XLVIII), and postponement and delay in consequence, will have to be carefully watched to prevent abuse.

It does strike me that, supposing a Collectorate and two sub-divisions be eventually found unequal to the work imposed by these suits, remedy might be had by handing the cases over to Sudder Ameens and Munsiffs *under this Act*. What harm would there be in the insertion of a clause in the Act empowering the local Government to invest any Principal Sudder Ameen, Sudder Ameen, or Munsiff at any time with the power of trying such cases by the forms of procedure of the Act, instead of by the more cumbrous process as at present?

The cases likely to arise are often very complicated. Some of the Deputy Collectors are likely to be inexperienced and will have police and judicial duties to attend to, such duties invariably taking the precedence of revenue suits. The Native Judges, as a body, have one class of duties and are versed in these suits. I would leave Government the option of creating more Courts than three, for I do not think that three or four Courts will get through the work, and I am sure that other Judges of greater experience in civil work will bear me out when I say that no cases can be more intricate or perplexing than cases of rent, rates, the fact of arrears, or the parties to which the rent is to be paid. I would at any rate make six years the limit for arrears and not three, and rather than cut off the landholder or rent-receiver with so short a time as three years, I would allow him still to sue for the 4th, 5th, and 6th year under the old law in the Civil Court—for the first three in the Collectorate or Deputy Collectorate summarily, or by the regular suit, if he preferred

it, in the Civil Court, and for the last three in the Civil Court alone. On the other hand, the provision for training Collectors and Assistants to Collectors for the duties of Judges afforded by the extensive class of the suits which they henceforth will have the power to try, is sufficiently obvious, and will be productive of good in another way.

With these general remarks I proceed to note various provisions in the law which to me seem open to discussion or revision.

SECTION III.—It might be possible to declare *even more distinctly* that no suit should hereafter be brought in any Civil Court for rents beyond the pergunnah rates, and that any zemindar or middleman claiming such rates, should at once be non-suited. Nothing in this should prevent a suit for rent on a larger area than the ryot declared himself to hold when such area had been ascertained by measurement.

Pottahs of hereditary ryots and of other cultivators.

SECTION VIII.—If by this provision it be contended that the zemindar's naib, or tahsildar, or gomashta, or peon, is to be debarred henceforth from sending the peon or takidgir to summon ryots to the village or pergunnah kutcherry to settle about their instalments or rents, I am of opinion that very serious inconvenience will be felt; that in many instances where there exists a fair understanding between landlord and tenant, ill-will and variance will be created; that zemindars will be deprived of a very necessary power by which they are now enabled to settle matters in many cases out of Court; and that in the end the ryot will be the sufferer, as he will be sued, with interest, for the sums which this provision, should it become law, may, in any village quarrel, tempt him to withhold. I am well aware that it is urged that this provision for the recovery of their rents has been much abused, and that there are instances where ryots have been dragged from their houses and kept in duress for two or three days together, and left to a subsequent remedy of case of assault in the Criminal Court. I *believe* these cases to be exceptions. I am *certain* that there are *scores* of cases where no hardship whatever is inflicted; and I have during this past year seen a dozen ryots at a time on a dozen different occasions not very discontentedly going to or returning from the house or kutcherry of the zemindar in company with a peon or gomashta who had been sent to procure their attendance for the adjustment of their rent. Under the words "compel attendance" this salutary arrangement will become almost impossible, for no ryot regards the summons of the peon as other than, *to a certain extent*, compulsory, though there may be no violence used, and though in the end it may have the effect of adjusting matters. I fear much that, if no landholder is to be allowed to summon his ryots as he has hitherto done in a quiet way, much discontent and inconvenience will ensue; no ryot in many villages will go near the kutcherry, and no peon can then be sent to call him. A few determined men leagued together may, for weeks or months, set the zemindar at defiance. Nothing will be done without a summary suit, which in the end will make a ryot rue his temporary freedom from liabilities. Amicable adjustment of disputes, deferred calls, in bad seasons, for rent, which, though of frequent occurrence, are never heard of by the authorities, who only see the cases where the privilege is abused, will never more be heard of, and a very wide breach will be made between landlord and tenant. Besides, I think that the rights, position, and claims of the ryot are so clearly defined and so permanently assured by the other provisions of this draft Act, that to withdraw from zemindars their present power, will be going too far in another direction. I submit, therefore, that, whatever chance there may be of an occasional suit for assault, battery, and false imprisonment, the law in this respect should not be altered. In urging this I am well aware that I have the press and many men of considerable authority against me. But I have seen a good deal of ryot-life lately, and have reason to know that it is not in this respect that the ryot feels himself unprotected or requires the intervention of the law.

Landholder not to compel the attendance of tenant for adjustment of rent or for any other purpose.

Section XVII, clause 1—All suits for the delivery of pottahs or kabuliuts, or for the determination of the rates of rent at which such pottahs or kabuliuts are to be delivered.

SECTION XVII.—The main points of the law appear to me to lie within this paragraph. If it be intended that, with the exception of dissatisfied third parties, to whom power to

MR. W. S. SETON-KARR,—Jessore.

Clause 2.—All suits for damages on account of the illegal exaction of rent, or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress.

Clause 3.—All complaints of excessive demand of rent and all claims to remission of rent on account of diluvion or other cause.

Clause 4.—All suits for arrears of rent due, whether on account of land, either kheraji or lakheraj, or of any rights of pasturage, forest-rights, fisheries, or the like.

Clause 5.—All suits to eject any ryot or cultivator, or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot or cultivator may be liable to ejectment or a lease may be liable to be cancelled.

Clause 7.—All suits arising out of the exercise of the power of distraint conferred on zemindars and others by sections XCVII and C of this Act, or out of any acts done under colour of the exercise of the said power, as hereinafter particularly provided.

institute a civil suit is given by section LXII, there are to be no actions by any one on any question connected with rent anywhere but in the Revenue Courts, and that appeals are to be limited in extent as in section CXLI, I must venture to think this open to amendment. Many of the suits arising out of claims to rent, fisheries, forest rights, ejectment, or occupancy, are exceedingly complicated and require both time and attention. As I read the law now, it gives no appeal, *as a right*, under fifty rupees, in the cases defined by clauses II, IV, and VII, with three exceptions; nothing, in short, but a power of review by the officer trying the case, or a power of revision by the officer above him. (See sections CXLII and CXLIII.)

There is, it is admitted, an appeal to the Civil Judge in all other cases. Now, it is exactly in these small cases that a second hearing is often quite as essential to justice as in cases of larger amount. They may be the one case in a poor man's biography, and are everything to him. In order, then, to avoid discontent and to give all claims occurring in a complex state of society, great or small, a fair chance, I would respectfully submit that this part of the law be altered somewhat as follows:—

(1.) One appeal to lie from the covenanted or uncovenanted Deputy Collector to the Collector in all cases where an appeal is not otherwise specifically provided for, of whatever amount, *as a matter of right and on the evidence.*

(2.) The Collector's decision in such cases to be final unless otherwise provided for, section CXLII to be thus expunged and section CXLIII to be modified, so as to admit an appeal, but the provisions of section CXLII as regards a re-hearing, to apply to *Collectors*, who, under it, might have power to review their own judgments on the discovery of new evidence or matter material.

(3.) In all cases above fifty rupees in the three clauses (2, 4, and 7) alluded to, or under them, though the exceptions are provided for by section CXLI, and in all cases too, of whatever amount, under any of the other clauses of this section, an appeal to lie to the Zillah Judge in the manner provided for in section CXLV.

(4.) The decision of this officer to be *final* in all cases involving questions of right up to fifty rupees, and in all questions of money—such as mere *actual* arrears or damages up to three hundred rupees, unless the Judge himself shall certify that, owing to the novelty of the case, or to its importance as a precedent, or to the peculiar position of the parties, or to any good and sufficient reason, in his opinion a special appeal to the Sudder Court is desirable, when it may lie accordingly.

(5.) In all other cases above fifty rupees on the one hand and three hundred rupees on the other, a special appeal to lie in the Sudder Court, as a matter of right on the law, on the irrelevancy of the legal decision, or its opposition to any known rule or legal principle, but not on the ground that the decision is not warranted by the evidence.

It may be said in regard to the above that, while the cases tried by one officer—that is, a Deputy Collector—will be appealable, the same kind of cases tried by the Collector will not be appealable, and that this is anomalous, and the answer is that it may be so, but that it cannot well be helped, unless you are prepared to allow an appeal as a matter of right in all cases, and that to different Courts. For, if an appeal were allowed in all cases, it might have to lie from the Deputy Collector trying a case under fifty rupees to the Collector, and from the Collector trying the same kind of case *to the Judge*. This would be still more anomalous; and considering the experience of Collectors generally, I think such cases may be final in their hands. In any case, I see no other way out of the difficulty but by allowing the Collector the power, which

I would allow to the Judge, of recording that, in particular points or new cases, an appeal should lie, and it might then lie from the Collector to the Judge.

Clause 6.—All suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot or cultivator, farmer or tenant, has been illegally ejected by the person entitled to receive rent for the same.

SECTION XVII.—Is not this provided for already by Act IV of 1840, which is a cheap, well-understood, and easily-worked law? and may there not be a clashing of jurisdiction if this clause pass? or might it be mentioned that Act IV may still be resorted to in such cases at the will of the dispossessed or ejected party?

Ejectment of cultivators, farmers, &c., by Zemindars.

SECTION XIX.—With reference to the last part of this section, I trust that it is intended that all cases whatever of non-fructuary mortgages, &c., shall be excluded from the operation of the law, and the parties be left to the usual remedy in the Civil Court. But this is not distinctly mentioned.

Statement of claim to be written on stamped paper, except when plaintiff is unable to pay for a stamp.

SECTION XXVII.—I venture to object to the provision which allows the Collector to admit a plaint on plain paper if satisfied of the inability of the plaintiff to pay for it. If this be allowed, very few ryots, in this district at least, will ever possess eight annas, and easy-going Collectors will allow the admission of plaints on plain paper indiscriminately, merely to get rid of pertinacious or clamorous applicants. Besides, when it is enacted that no other stamp but eight annas shall be required in these suits in any other proceeding, and when it is considered what solid rights, what real advantages, and what lasting benefits can be procured by an easy process under this law, I think it may well be expected of all claimants that they should pay this much. It is just this sum that may deter many ryots from making false and needless claims, and in reality no real hardship will be inflicted on any one. The very poorest can borrow or beg eight annas. I submit that the stamp should be an essential preliminary, and I may observe that I have seen lately a great amount of tyranny exercised under the Pauper Act, which dispenses with stamps and which requires the most jealous vigilance to guard against abuse *by the pauper*. Moreover, I see no reason why stamps should be discontinued in cases above one hundred and fifty rupees, the present limit in Munsiffs' Courts.

Warrant of arrest in what cases to be issued.

SECTION XXXI.—Is not the applicant to be examined "*on oath*," and if so, should not words to this effect be inserted in the section?

Procedure when defendant is brought before the Collector under warrant.

SECTION XXXIII.—The greatest limit of security to be taken might be mentioned.

In all other cases, summons to issue and personal attendance of defendant may be required.

SECTION XXXV.—I would suggest that at least *two* witnesses instead of *one* be required with the defendant.

Consequence of inability of agent to answer.

SECTION XLV.—The limit of postponement should, I think, be mentioned distinctly in this and in sections LI and LVIII, otherwise scope is given for fancies and for delay. A month or six weeks at most seems to me a reasonable time for the production of further proof.

Consequence of neither party appearing on the day of trial.

SECTION LIII.—Is the limitation to run from the date of the original cause of action, or from the date when the case is thus struck off? If from the latter, a much longer time than three years may be taken under the present law of limitation, whereby a fresh period is permitted from the date when the case is struck off. I am an advocate for the period running *from the cause of action once for all.*

Revival, reversal, and alteration of *ex parte* decrees under certain rules and conditions.

SECTION LVIII.—I should prefer a limit for the defendant to appear, say, two months, otherwise anomalies will arise in practice.

If on trial of suit for delivery of pottah, parties do not agree as to the time for which the pottah is granted, Collector to fix the time.

SECTION LXI.—I would earnestly beg for power for the Collector to extend this period to twenty years in all permanently-settled estates, for the simple reason that, the provision being an admirable one in itself, I would give as long a term under it as can properly be given with a view to the rights of all parties. Such an extension of the term will, I think, set a man up completely and put an end to all squabbles for the better part of an occupant's life-time, or after he arrives at manhood.

Statement of Opinions of local Judges on the Bill.

MR W S. SETON-KARR,—JESSORE.

SECTION LXVII.—No specific punishment is mentioned. I would insert a proviso that any person obstructing may be liable on prosecution before the Magistrate to two hundred rupees fine, or six months' imprisonment with or without labour.

Mode of executing decree for ejectment or re-instatement of ryot or cultivator.

SECTION LXXII.—I have some doubts as to the propriety of this provision. Creditors will attach any person's property which they may fancy, especially if it belong to the debtors' relations, or to obstructive or troublesome ryots in the same village, or to any parties likely to be recusants. I would recommend the rescission of this, and make a specification of property imperative; failing this, the creditor may imprison his debtor. But this is exactly the last thing a native thinks of unless animated by extraordinary spite, as he must then pay for a man's diet while in jail, so he will attach *any* property he may fancy instead.

Application for execution against moveable property.

SECTION XCIX.—Does this mean that any person producing a kabuliut of any kind as given by a cultivator may distrain the produce of the land? If this be intended, I fear that the ryot will be much less protected than was hoped for. To make a kabuliut costs nothing, and few talukdars, zemindars, or others will have the slightest hesitation in procuring a forged document of this sort, if its production will enable them to sell produce off-hand. I would suggest that the kabuliut be restricted to mean one given by the Collector, or acknowledged by him, or one on which a decree has been given in other years in previous suits. Reading this section with section LXVI, I take my intention to be the intention of the law.

No distraint in certain cases.

SECTION CI.—On the other hand, I think the permission given to the cultivator to reap and gather a crop notwithstanding the distraint, concedes too much to him. The crop will in most cases be made away with, or given to some friend who will take good care that the distrainer shall never see it again. If distraint is to be allowed—and I think it may well be allowed as restricted by this law—I would allow no one but the distrainer to reap and store unless the ryot give security, and the produce might be stored in some conspicuous or known place in the village and in the presence of the most respectable inhabitants.

Standing crops, &c., when attached, to be reaped and stored by the cultivator, or if he neglect to do so, by the distrainer.

SECTION CVII.—The Civil Court Ameens have just been reduced in number and placed on a different footing. Instead of twenty-two in this district there will be only three from the commencement of 1858, and so in their districts their duties will be confined to investigations in important boundary cases, or in disputed rights to estates. The area of their jurisdiction will be very extensive, and their work, as devolved on them by the Civil Courts, will be quite enough to occupy them without giving them the duties contemplated in this Act. I would suggest that the words "Civil Court Ameen" be struck out everywhere in the Act, and the name of the Sale Ameen, whoever he may be, distinctly specified. The duties of sale, which hitherto have been performed by Ameens in execution of the decrees of the Civil Courts, will henceforth be performed by the Nazirs of the Munsiffs.

Application for sale.

SECTIONS CXIXII and CXXIV.—The damages should be distinctly specified. Taking some of the old laws as a guide, the sum leviable in vexatious or groundless distraint, might be three times the value of the produce distrained or not more, in any case, than one hundred rupees. Such a sum would be sufficient to deter, while it will guard against arbitrary, uncertain, inadequate, or unlimited fines. At any rate the words "as the circumstances of the case shall seem to require" seem to me to be hardly words for a positive law.

SECTION CXXIII.—Procedure after institution of suit to contest distrainer's demand.

SECTION CXXIV.—Any person, whose property has been distrained for arrears of rent alleged to be due from another, may institute a suit against the distrainer, &c.

SECTIONS CXXVI, CXXVII, CXXVIII.—The same remarks apply. The extent of the damages should be specified, and might be fixed as above; and so on, whenever the amount is not mentioned.

SECTION CXXVI.—Persons prevented from suing in time to save their property from sale, may sue for damages.

SECTION CXXVII.—Also persons aggrieved by any illegal act of distrainer.

SECTION CXXVIII.—Unlawful distraint.

SECTION CXXXI.—It is not specified who is to serve the process "free of charge." The peons of the Nazir's establishment get nothing in the shape of regular pay, and naturally object to serve a process without fees, which are their only means of support. It is certainly possible for the orderlies on the Collector's establishment to serve a process, because they are regularly paid servants. But they, too, object to unpaid labour not in their line. The Collector may not like to depute them. If they are deputed, the work is done negligently because it is not paid for, or else the orderly or peon is very likely to harass the summoner for his perquisites. I mention this, having seen something of the difficulties alluded to in pauper cases and having a belief that this sort of relief, however well intentioned, very often becomes a burden. Still, if the proviso is to be retained, I would suggest that the parties by whom the process is to be served, free of charge, be *distinctly specified.*

Service of process.

SECTION CXLI.—I have already stated my opinion as to the propriety of allowing an appeal from the orders of all officers, whether covenanted or uncovenanted, to the Collector. From what I have seen of such officers,—that is, Deputies, especially Natives, in charge of sub-divisions,—I am quite satisfied that some such opportunity for speedy redress from their orders is imperatively necessary. An officer with the powers of Joint Magistrate and Deputy Collector, in a sub-division thirty miles from Judge, Magistrate, or Collector, has really very considerable power, not too much if rightly used, but I regret to say I have seen orders passed by such officers tending to confound civil, criminal, and revenue jurisdictions altogether, to do very serious injustice to individuals, and to leave such persons without any redress but a tedious civil suit. As the law stands, they will not even have this tardy remedy—a Collector, Magistrate, or Judge can set matters to rights in half an hour. It is proper, too, that a Collector should be felt and known in every part of the district. He is generally an officer of some experience, while a Deputy or Joint Magistrate or Deputy Collector is now a younger man than his direct official superior, and has much more power, because he is less under supervision and control.

No appeal from any decree for money below fifty rupees unless the decision involves some question of right to enhance rents or some question relating to a title of land.

SECTION CXLII.—I would ask whether the word "evidence" is to mean "documentary evidence," for mere *oral* evidence seems to me to be giving a large loophole for fresh and vexatious proceedings. But if an appeal is allowed, as a matter of right, from the Deputy Collector, this section will only apply to the Collector.

In suits not open to appeal, Collector or Deputy Collector may grant a re-hearing upon the discovery of new evidence, &c.

SECTIONS CXLIV, CXLV.—Is the order of the Zillah Judge to be final, or is there to be the power of a special appeal to the Sudder Court? I would suggest, as already noted, that there be a special appeal; and as I read the law, there will be nothing to prevent a dissatisfied third party from bringing a regular suit to prove his rights.

SECTION CXLIV.—In suits other than those under section CXLI, appeal to lie only to Zillah Judge.

SECTION CXLV.—Rules regarding presentation and hearing of appeals.

I sum up the principal amendments, omitting slight changes and remarks on procedure, which I have thought it necessary to propose to this law.

(1.) An option of extending this Act or some of the cases actionable under it, to Principal Sudder Ameens, Sudder Ameens, or Munsiffs, to be left with the local Government.

(2.) No rent to be decreed beyond the pergunnah or local rates in any case or in any Court.

(3.) Power of summoning their ryots for adjustment of rent, to continue with zemindars and rent-receivers generally.

(4.) An eight-anna stamp to be paid by every one suing in any case under the Act, and stamps to be payable as usual in all cases above one hundred and fifty rupees.

(5.) Time of limitation to run, *once* for all, from the cause of action.

(6.) The presiding officer to have power to give a pottah to a ryot for any time not exceeding twenty years.

(7.) Creditor not to attach any property he may fancy, and the crop attached to be stored in the village.

Statement of Opinions of local Judges on the Bill.

(8.) Appeals to be allowed on the scale specified in the note, and one appeal, as a matter of right, even in small cases.

Mr. W. S. Seton-Karr,—Jessore.

Mr. A. Pigou,—Moorshedabad.

Moorshedabad (*Mr. A. Pigou, Officiating Judge*).—Approves. "The proposed Act is an admirable one in every way, and it cannot be passed into law too soon. The withdrawal of the practically undefined power of the landlord to cause the attendance of his ryot is a measure fraught with extreme benefit and justice to the ryot, and the other provisions of the proposed enactment are eminently calculated to protect the ryot from the undue exercise of power by the landlord, and at the same time to give the landlord ample opportunity of realizing his own just dues."

Mr. P. Taylor,—West Burdwan.

West Burdwan (*Mr. P. Taylor, Judge*).—Section II.—The rules of the decennial settlement comprised are as per margin, in regard to the pottahs of ryots paying in kind, after *kemkoot* or estimate of the value of the crops on the ground, made just before harvest, which has never been abrogated. Such being the case, it appears to me that this section is not sufficiently explicit in regard to what the pottah of such ryots ought to contain.

In cases where the rate can be specified, such as where the rents are adjusted upon a measurement of the lands, after cultivation, or on a survey of the crop, or where they are made payable in kind, *the rate and terms of payment* and proportion of the crop to be delivered, with every condition [1] shall be clearly specified.

*Including the length of the rod used in measurement.

(2.) In Zillah Behar, where I was Collector, it was customary, in Bhowlee cases or those of ryots paying commutation for rent in kind, for the zemindars to evade giving any pottahs at all, and instead of kabuliuts, to exhibit, with their summary plaints, mere *hissab-bakis*, drawn up, without the apparent knowledge of the ryots, at the close of the year. By this dishonest and oppressive system, they entirely evaded the rule above cited, and at the same time contravened another which enjoined calculation and ascertainment of all instalments with reference to the time of reaping and selling produce; moreover, by fixing the *hakim's hissab* at the end of the year, when grain was dearest, they obtained a much larger money value for it than was equitable to the cultivator. I did my best to obtain the abolition of the above system, at my own considerable peril, as the Sudder Board and Government were against me; but the Court of Directors eventually coincided with me in opinion as to the injustice thereof if truly characterised, and called upon the Government of Bengal for a further report regarding it [2]. What the eventual result was, I have never been able to learn.

[2] *Vide* letter of Secretary to Government of Bengal to Sudder Board of Revenue, No. 736 of the 31st August 1847, and the despatch of the Hon. Court of Directors, dated 2nd July 1851, No. 6, with relative correspondence between the Collector of Behar and the Sudder Board of Revenue.

(4.) It appears to me that the pottahs of ryots actually paying in kind, ought to contain the particulars mentioned in the rule above cited, that when commutation for the same in money, based upon measurement and estimate of crops, is arranged for, a memorandum of the said measurement, estimate, and valuation of the *hakim's hissab* at the current bazar rates ought to be made and signed by the cultivator at the time of harvest, and that no *dustuck* (or *capias*) ought ever to be issued in suits for balances of the above description (in which no accounts of previous years can be produced), nor distraint allowed, unless upon exhibition of counterparts of the above pottahs and memoranda. Papers of the latter kind are frequently exhibited in Bhaugulpore, where they are called *jureebee kurgur*, and more rarely in Behar, where they are denominated *dausbundees* [3].

[3] These papers ought to be preferred even if pottahs exist.

(5.) *Istimraree* commutations of course become mere *nugdee jummas*, and appear, like any others, in the *jumma-wasil-bakees*.

(6.)—Section IX.—I would recommend the insertion of the words "*the criminal*" between the words "*by*" and "*law*" at the end of this section, and it might be as well to specify the particular law allowed.

(7.)—Section XIII.—I am of opinion that ryots and others ought to be allowed to deposit instalments offered before or on the day of their being due, but maliciously refused by the landholders, in the Collector's treasury. Such malicious refusals are very frequent, and the mere existence of permission to deposit in the Act would effectually frustrate them.

(8.) With reference to the word "*usage*" in this section, I would recommend that all Collectors be enjoined to draw up a *catalogue raisonnee* of usages and tenures peculiar to their districts, in such clear and concise terms that their successors may be able to obtain an acquaintance with them immediately on taking charge.

(9.)—SECTION XXIV.—I would recommend the substitution of the words "*old balances*" for the word "*arrears*" in the first line of this section, because they more clearly indicate the meaning thereof, as opposed to that of section XXII.

(10.) SECTION XXVII.—I cannot perceive the justice of landholders being made to pay eight annas before they can sue for their rent, for the main object of the Act is to enable them to pay their revenue as expeditiously as they can without oppressing their ryots in the collection of their own dues. I again recommend, as I did in 1848, that no stamp duty whatever be levied in suits for rent. If such claims are just, no impediment ought to be placed in their way, and the rest of the Act will sufficiently prevent unjust ones from being instituted.

(11.) To add a tax to a tax does not appear fair, and it is beneath the dignity of Government to make landholders pay for justice when the administration thereof, in rent cases, tends directly to its own benefit.

(12.) SECTION XXIX.—The inconveniences experienced by auction-purchasers of all kinds, in consequence of non-obtainment of papers as a basis for collection of the rent of their newly-acquired estates, has, in consequence of the disuse[1] into which the *putwari*, laws have fallen, become very great.

(13.) A separate enactment, in repeal of the said laws and authorizing Collectors to treat the ousted *zemindars*, *putnidars*, *lakherajdars*, &c., as dismissed *putwaris* is imperatively called for. The accounts of estates ought, of course, to be looked upon as belonging thereto, and the Government have therefore a perfect right to pass a law of the above description.

(14.) It might be so framed as to enable the new incumbents to apply for *dustucks*, upon their predecessors neglecting to obey timed calls made by Collectors immediately after sales became final If nothing more than *rywar terij jummabundees* be exacted, they will obviously be of vast use to purchasers, and even if the *jammas* thereof be, in certain cases, purposely falsified, the knowledge of the names and whereabouts of the ryots will enable the new incumbents to find out the true ones in half the time they do at present. The penalty of non-production of the required papers ought to be a daily fine eventually realisable in the same manner as moneys decreed by the Civil Court.

(15.) One great evil will be got rid of by the proposed separate enactment; namely, the repeated sale of estates which now takes place *after the first*, merely because their successive purchasers get so behind-hand in their collection of rent as to be obliged to let them be sold for balances of Government revenue.

(16.) SECTION XXXII.—I would insert the words "*together with any witnesses who may be willing to accompany him on the day of his apprehension*" (see section XXXVI). If the indulgence be accorded in one case, why not in the other?

(17.) SECTION XXXIV.—It appears to me that it would be preferable to issue the *dustuck* and *ishtehar* together, the latter to be suspended in the event of the former being unsuccessful.

(18.) SECTION LXVIII.—A written proclamation ought to be affixed to the pole alluded to in this section.

(19.)—SECTION CV.—The written authority alluded to should bear the seal and signature, or the latter only, of the person empowered to distrain, and the same should also be witnessed like a regular *mukhtarnamah*. If these requisites are not provided for in this section, the credentials under remark, which are of the utmost importance, will be drawn up in such a manner that they may be denied or acknowledged by the principals at pleasure.

(20.)—SECTION CVI.—I would add the "*giving a receipt for the arrear in which such withdrawal shall be mentioned*" at the end of this section, because they appear necessary to the completeness thereof.

From the words "of the suit be for an arrear" *usque ad finem.*

[1] But not in all districts. There were about 5,000 putwaries in Zillah Behar when I left it, in consequence of one of my predecessors having misconstrued the Regulation, and ordered the appointment of one to every mouzah, instead of to every taluk. When I reported this to the Sudder Board of Revenue, they informed me that the putwari law *was a dead letter in the Lower Provinces.*

Statement of Opinions of local Judges on the Bill.

Mr. P. Taylor,—West Burdwan

(21.)—Section CVII.—I would say—"*on the fifth day from the date of making the distress, or, if the property distrained consist of standing crops or ungathered products, on the fifth day from the date of the storing thereof, or, if the fifth and one or more subsequent days be closed holidays, then on the next day on which the Collectors' Courts may open.*" I would make this alteration, because, otherwise, persons authorized to distrain will but too often apply for sale on the *next* day after distraint or storing, to the great inconvenience of distrainers, who always require some time for settlement.

(22.)—Section CVIII.—I would leave out the last "and" in the first sentence of this section, and add to it the words "*and the names of the custodians (zemindars) thereof,*" for it is of importance that the names of such persons should at once be made known to the functionary who has to sell distrained property.

(23.)—Section CIX.—The above elision and addition ought also, I think, to be made in the last sentence of this section.

(24.)—Section CXIV.—The Ameen ought to be made to record in writing why he thinks that the place of sale may be changed with advantage, and the *lot-bundee* ought to be approved and signed by both debtor and creditor, if present.

(25.)—Section CXVI.—I think that it would be preferable to provide for the payment of fees, to the extent of one anna per rupee, on the amouut of the bids at once; the allowance of no more than two or three hours for collection of the rest of the purchase-money, and confiscation of the fees and speedy re-sale, if the same be not paid up within the time fixed. It is inexpedient to leave anything to the discretion of Sale Ameens, or to allow the sales to pass the day fixed for their completion when there are a sufficient number of bidders present thereon.

(26.) Section CXVIII.—Dismissal from office ought to be the distinctly mentioned penalty of misfeasance under this section.

(27.) Section CXXI.—Provision should be made in this section for retention of a sufficient record by Sale Ameens.

(28.) Section CXXIV.—I am of opinion that distinct provision should be made in this section for award of damages against both plaintiff and defendant, jointly and severally, in cases in which there may be reason to suspect that they have colluded against the claimant. Very many suits of that kind are instituted at present.

(29.) Section CXXV.—For the words "*who may have a legal title*" in the last sentence of this section, I would substitute "*who may be of opinion that he has a legal title.*" I would insert the words "*endeavour to*" between the word "*to*" and the words "*establish his title*" in the next line.

(30.) Section CXXVII.—This section ought to include the custodians (*zemmehdars*) of the distrained property among the persons against whom, in conjunction with misfeasant distrainers, damages may be obtained by distrainees.

(31.) Section CXXXVII.—I think the appeal allowed in this section ought not to go beyond the Commissioner of Revenue.

(32.) Sections CXXXIX and CXL.—It appears to me that it will not be expedient to make the orders passed by the Deputy Collectors employed under this very explicit and generally unmistakeable Act, appealable to Collectors, but to Commissioners of Revenue only. The difference between the two names is this, that a very large proportion of the orders of Deputy Collectors will be appealed to Collectors, and a very small one to Commissioners. No injustice, but the contrary, will, in my opinion, be caused by the emendation recommended, for the mere difference of distance between the residences of the Collector and Commissioner will, in most cases, prevent the appeals actually made from being either vexatious or frivolous.

(33.) Sections CXLIV and CXLV.—I conclude that the second of these sections is meant to include permission to the Judge to make over a certain number of such appeals, when necessary, to the Principal Sudder Ameen for trial. If not, with reference to the great additional work likely to be inflicted upon Judges by the first section cited, I beg to recommend that such permission be explicitly given in the second.

All the residual sections.

(34.) Of all the remaining sections I entirely approve.

General Remarks.

(35.) I consider the proposed law to be, on the whole, a particularly good

one, and I am naturally the more inclined to think so, because I find that many of the provisions thereof embody recommendations made to the Sudder Board of Revenue by myself, in an elaborate report upon the summary suit and distraint regulations drawn up in 1848, of which I have the foul copy by me.

(36.) Now that it has *at last* been eliminated, I trust that it will be found the "*Deus ex machinâ*" for the salvation of many and many a poor ryot from the claws of his oppressors, at the same time that it will enable the payers of Government revenue to realise their rents with due celerity.

(37.) Of the latter consummation I have some doubts; particularly at first, though the presumable final tendency of the enactment will be the acceleration of rent collection, now clogged by every sort of oppressive, evasive, or collusive tricks on the part of landholders, middlemen, and their under-tenants.

(38.) The collective experience of the fiscal officers consulted when the Act was in embryo, has to my eye fully provided for the frustration of all such tricks, with the exception of a few for which I have endeavoured to secure defeat in this report.

(39.) I am afraid that the proposed law will, for a long time, entail very heavy additional work upon the Collectors and Judges of certain districts, such as Backergunge, Chittagong, &c., and that it may be found necessary to appoint a good many more Deputy Collectors than are now upon the lists, to administer it fully and duly in all quarters. These evils may possibly be more temporary than they appear to me at present, but of what weight are they, if justice to millions can be purchased by their existence?

(40.) In conclusion, I beg most earnestly to draw the attention of Government, through the Sudder Court, to the absolute necessity of their publishing this golden Act, this "*monumentum* (I trust) *ære perennies*" of the careful justice of the much maligned East India Company in such a way that the most illiterate of the persons whose interests are involved in it may have a chance of becoming aware of its provisions.

(41.) Act XI of 1841 (afterwards I of 1845) was translated, printed, and distributed gratis: let this, which is, if anything, more consequential, inasmuch as it concerns the very fountain heads of Revenue, be promulgated in the same manner. Let the perusal thereof be enjoined in all the English and Vernacular schools, and let the Civil Court Ameens be ordered to keep copies, and to explain the sections thereof to any ryot who may wish to know how he is cared for by his rulers.

HOOGHLY (*Mr. H. C. Halkett, Offg. Judge*).—The contemplated law is, in a great part of its provisions, virtually a re-enactment of much of what previously existed on the subject of recovery of rent in balance.

In certain particulars I would, with all deference, hold that some change is still required.

SECTION XIV relates to ejectment of the ryot on an arrear remaining due at the end of the year, "*Bengali or Fusli as the case may be.*" This I scarcely comprehend;—at least, the advantage of it seems in any sense more than doubtful. It joins together, under a seeming similarity of expression ae to time and season, two very different realities; inasmuch as the end of ths Fusli year occurs in Bhadoor, that of the Bengali year in Chait. Here are two very different seasons contemplated as the proper time for doing that which justice as well as convenience would direct to be resorted to only at one particular period of the year.

In such parts of Bengal where the Bengali era is current, no inconvenience could be felt from matters remaining as here proposed; but in Midnapore, for instance, or in Cuttack or Bhaugulpore, where the Fusli year (under the name of Vilayeti) is the prevailing date for reckoning and in which the last month of the year is Bhadoor, the greatest inconvenience would result from the enactment; as the ryot would be called upon to pay up just at the very period most inconvenient, if not impossible, for him to do so, under pain of being ejected. In Bhadoor he has just begun to plough, or at most to sow, his lands, the crops of which will not be reaped until months afterwards;—and he is therefore called upon for his rents just at the very time when he is in the worst possible position to make good the demands upon him.

SECTION XXI seems to me to be particularly good as respects all parties concerned; the existing practice of summary ejectment of grantees on discovery of lands held under grants dating subsequent to 1790, being now superseded,

and a reference in the first instance to the Collector substituted; the reference to that officer being followed by enquiries into the case on his part.

The benefits of the provisions of section VIII, which proposes to abolish for ever the hitherto prevalent right of the landholder to compel the attendance of the ryot for a settlement of his accounts, seem to me on reflection to be very problematical. The practice, though occasionally opening a door to abuse, still has counterbalancing advantages. There can be no doubt that, under the existing system, which admits in its very nature of a clear understanding being come to as to how the account between the parties actually stands, must be advantageous, as obviating much confusion and miscomprehension, where anything like a wish to deal fairly really exists, and saves much future annoyance and litigation. On the other hand, where the zemindar is disposed to behave tyrannically, nothing whatsoever that I can see interposes to prevent him attaching property for pretended arrears, where, when, and from whatever tenant he pleases to make his victim.

On this subject of attachment of property, I am clearly of opinion that great and radical changes are requisite. I would suggest that all applications for attachment and sale of property should be made in the Munsiffs' Courts, where also all claims of third parties to the property so attached could be heard and adjudicated. In no instance, I fancy, are these local Courts situated at such a distance as to entail needless delay or expense to the poorer classes concerned in such cases, nor would very great extra duty be entailed upon the Munsiffs themselves. If thought requisite, sale of property could be conducted by the Civil Court Ameens or by the Nazir or other officer of the Courts. The abolishment of the Sale Commissioners would be decidedly a benefit. These men *must* be more or less under the influence of the great man of the quarter where they hold office; whereas the new class of Ameens, or even the Court officers, are by no means so likely to be at his disposal in matters relating to the discharge of their duty in this particular. The mere necessity of having to receive an order of Court previous to attachment would, in itself, form a great check to the abuses now too prevalent. Under the existing and proposed system, the proprietor has only to serve the defaulter *(real* or *pretended)* with a demand and a jummah-wassil-bakee previous to or at the time of distraint; but this in itself is not much and may be easily neglected; for who is to show that the form required has *not* been gone through? The ryot cannot prove a negative and show that he has *not* been served; while the landlord can easily prove service at the least possible trouble or expense to himself.

A most wholesome check to the institution of fraudulent suits against pretended defaulters on the part of landlords would be at once formed, were such parties in all districts compelled regularly at certain stated intervals to lodge in the Collectors' Courts of the zillahs copies of their jummah-wassil-bakee accounts. Excepting that this would entail some trifling addition of expense and trouble, I see no possible objection to a scheme at once simple and efficacious, and which would, I think, in a great measure, if not altogether, form a complete bar to the system of getting up false cases in the Collectors' Courts for arrears of rent against tenants in future. The account papers (at hand and referrible to in a moment) would at once and entirely refute the claim, if an unjust or exaggerated one. These accounts could be destroyed every ten or even every five years, and would not form a troublesome accumulation in the record office, where, if necessary, aseparate room might be awarded for their reception so long as required. These accounts might be written in the simplest form, and yet still embrace every particular of the matter on hand really requisite. The particulars of each ryot's account, such as the quantity of land held, the rent payable annually, the land where situated (that is, in what *mouzah*, and the nature of the lease, as also the date of its commencement, might all be comprised in one line, as for instance:

Name of ryot.	Amount of land.	Annual Jummah.	Name of Mouzah.	Nature of lease.	Date of lease.
Ram Doss	5 Bigahs	15 Rs.	Jyepore	Mocurruree (or for term of years as the case may be).	1st Bysack 1260.

It may be easily conceived that a document such as this, always at hand, would effectually counteract all unjust claims for arrears, and would prove of the highest benefit in the end to *all* parties.

MR. H. C. HALKETT,—Hooghly

MIDNAPORE *(Mr. G. P. Leycester, Judge)*.—SECTION IX.—I would enhance the penalty to five times the amount of the sum extorted.

MR. G. P. LEYCESTER,—Midnapore

SECTION XVII, Clause 6.—By this clause the provisions of Act IV of 1840, in regard to disputes between a landlord and his tenant, will be placed in abeyance, and the magisterial authorities will no longer be required to enter on the question of legal or illegal ejectment under section X of that law. I see no objection to this provision, but notice the fact, as otherwise the two authorities may clash.

SECTION XX.—It would be advisable to define what constitutes a right to measure land.

SECTION XXIV.—The concluding portion of this section appears contradictory where it declares "suits for arrears of rent may be brought within three years, &c.," and again, "but nothing shall be held to enlarge the period now allowed by law, &c.," which is only one year.

SECTION CIV.—The powers granted to distrainers by this section of breaking open golahs, granaries, &c., will leave open the door to much abuse as is now the case; moreover, the power seems unnecessary when the products of the land for which the arrear is due are alone liable under section CI to be distrained; and the landlord can effect this when the crops are ready to be reaped and still on the ground. The extraordinary power of forcing open golahs, &c., and entering dwelling-houses, seems as unnecessary as it has and will prove pernicious to the rights and independence of the tenant, and the presence of a policeman will be no safeguard to the ryot.

In regard to the other provisions of the Bill, I have no objections to offer; they will, it appears to me, work beneficially. The law should, however, declare that the fact of service of notices, or of inability to serve them, should be deposed to on oath previous to further process being allowed.

The opportunity which the proposal of such a law affords for checking the generally admitted abuse of summary procedure and powers of distraint for rent should, it appears to me, be taken advantage of.

The records of many a Collector's office would, I believe, if searched, show frequent instances of the facility with which the laws on this head are perverted from their purpose for the gratification of malice and revenge. A notable instance has lately come before me as Session Judge.

To guard against such abuses I would suggest that provision be made for withholding the power of distraint and the privilege of instituting summary suits for rent from all who had not registered themselves as zemindars and lakherajdars in the Collector's books.

In regard to putnidars and farmers and other intermediate holders, it should be certified that they are such, *bonâ fide*, by the holders of the respective superior tenures, before they are allowed to proceed under the law in question. This simple precaution would tend to remove innumerable causes of litigation, and to smooth the perplexities which abound in adjudicating cases connected with the tenure of land.

If a sufficient period of notice (say, a twelvemonth or more) previous to the enforcement of such prohibition were given, all reasonable complaint would be silenced, and even the appearance of hardship be obviated.

MR. O. W. MALET —Beerbhoom.

BEERBHOOM *(Mr. O. W. Malet, Judge)*.—In answer to your circular No. 4, dated 15th February last, received on the 10th ultimo, I have the honour to inform the Court that with a view to get at the sentiments of the people at large on the proposed Act, I went through it, section by section, with the Principal Sudder Ameen and Sudder Ameen of this district and the Vakeels of my Court, in open kutcherry, which was crowded with auditors, all or any of whom were invited to give their opinions.

2. The result follows; but I must remark that all the sections not noticed in this report were cordially approved of, and the whole Regulation is apparently very much liked as a whole, both by zemindar and ryot.

MR. O. W. MALET, —Beerbhoom.

3. I also append extracts from the most noteworthy of the proposed-to-be-amended sections, with the amendments in red ink[1], for ready comparison with the Act as published.

[1] Printed in italics.

SECTION VIII.—If the power of compelling the attendance of the ryots be entirely taken from the zemindars, it will be utterly impossible for them to collect their rents in time to save themselves from ruin, and as oppression is punishable under the succeeding section, I venture to suggest that this section be omitted.

SECTION IX.—The extortion by duress is certainly deserving of punishment; but it does not appear why the zemindar, who thus takes his legal due, should be punished to the same extent as an impostor, who takes what he has no title to. I would propose as an amendment that, where the due was found to be legal, the punishment should be the forfeiture of the amount, with damages; and when not due, of three times the amount, with damages.

SECTIONS X and XI were approved of, but it was the general opinion that it would be more satisfactory if such important cases were tried in the Civil Courts than as summary suits; and if economy to the parties was an object, it might be provided for by directing the stamps to be of the value of those used in summary suits.

SECTION XVII.—It was thought that the suits described in clause 1 had better be tried in the Civil Courts than as summary suits, or at all events, that they should be cognizable by them should the party aggrieved wish them to be so.

SECTION XIX.—It is a very common practice for people who have no right whatever to do so, merely to gratify spite or revenge, to threaten or even to bring summary suits against ignorant people, and this might be guarded against by directing that the Collector should first satisfy himself of the right of the person to sue or eject before proceeding under this section.

SECTION XXI.—It would be more satisfactory to the country if these cases had the full benefit of a formal legal trial in the Civil Court, as in some measure the Collector is a party to the suit.

SECTION XXIII.—This section might be amended by inserting "without objection" and the word "the" before the words "three years previous," &c. at the end of the section.

SECTION XXXIII.—In very few cases will a ryot or cultivator, when brought before a Collector, be able to find security: it is therefore proposed that, instead of calling on him to do so, his holding might be attached.

SECTION XL.—The allowing a party to enter his costs of summons even an hour after his application, would entail much extra labour in the office and probably lead to mistake; it is thought that (with the exception noted at the end of the section) no application should be received without it.

SECTION XLV.—In all the other Regulations the persons exempted from attendance in Court are noted, and it is hoped that this omission may be supplied, which, it is thought, may be done by directing such persons to appoint another and more competent agent.

SECTION LV.—It does not seem clear whether the Nazir's endorsement, as directed in sections XXXVIII and XXXIX, is to be considered sufficient proof or not, but it is thought better that some additional proof should be required.

SECTION LXII.—As, by section XXIV, other parties are allowed three years, it seems only justice that a claimant should have the same time given him to institute his claim.

SECTION LXV.—Considering that the ryot, under section II, is allowed to sue for a pottah, and that his decree, if he gains it, must be enforced, instead of authorizing the Collector to grant a pottah, which implies his inability to carry out his own orders, it would be better to give his decree the force of a pottah, as in the following section is allowed with regard to kabuliuts.

SECTION LXIX.—With reference to my remarks on section XXXIII, if that amendment is approved of, the words "of security given" must be omitted. I must note here that on this section being read, there was a general hum of approbation, and it was wished that its provision might be extended to all civil suits of every description.

SECTION LXX.—With reference to the proposed amendment in section XXXIII, if that is approved of, this would have to be added to this section, that the attached holding should be made over to the zemindar.

SECTION LXXIII.—As it is notorious that the longer the period a warrant has to run, the greater the laxity in executing it, it is thought that thirty days would be a better limit than sixty.

SECTION LXXIV.—As it is stated in the preceding section that no warrant is to run beyond a certain limit, there does not appear any use in repeating it at the end of this section.

SECTION LXXV.—It frequently happens that, in cases decided *ex parte*, the absent parties either are or pretend to be ignorant of the decision: it would be as well to include them in this section.

SECTION LXXXIII.—As these proclamations cannot be too generally known, it might be advisable to order copies to be sent to all the sudder kutcheries and the mofussil ones, and the thanah adjacent to the property.

SECTION LXXXVIII.—It is of course known that many false claims are put forward, but by not giving a claimant equal rights of appeal, justice may often be denied.

SECTION CI.—For the reasons mentioned in the remarks on section XIX, and to prevent oppression, it would be necessary that the Collector should either satisfy himself, before allowing a person to distrain, that he had a right to do so, or, what would be still better, that the Collector should himself distrain, on the creditor satisfying him that he had a right to do so.

SECTION CV.—If the proposed amendment to section CI is approved, this section might be omitted.

SECTION CVI.—For the words "the distrainer" read "the Collector."

SECTION CXIV.—It would be a great boon if the person whose effects were distrained was allowed to direct in what order the different lots should be sold, as it would have the effect of preventing spite on the part of the zemindar; it might often be the means of saving what was most valued by the ryot, and could hurt no one.

SECTION CXVI.—No moveable property should be allowed to be taken away till paid for, and the auctioneer should have no option given him of fixing the time for payment.

SECTION CXVII.—Leaving the amount of allowance to the distrainer to the auctioneer would probably lead to malpractices. Would it not be better to have some fixed rule; for instance, in accordance with Sudder Dewany Circular Orders, dated 28th August 1840, No. 98, and 11th March 1842, No. 190?

SECTION CXXIII.—Instead of giving optional damages, would it not be better to fix double the amount distrained for as compensation?

SECTIONS CXL, CXLI, CXLII, CXLIII, and CXLIV.—The Commissioner for by far the greater part of the year resides many long miles from all the stations of his district except his own head-quarters; it would be more satisfactory and convenient if all appeals were made to the Judge. It is not seen why the value should be the measure of appeal; it is thought that a poor man has as much right to appeal as another, and therefore that there should be no limitation as to value. Few people have an idea how very much the right of appeal is prized by the people of this country; it was observed by one of the parties in Court, while these sections were under discussion, that the right of appeal was the great difference between the English Government and all others, that it was the principal guarantee for justice, and that, were it not for this, why should the English Government be better than others?

SECTION CXLV.—The only effect of this section would be to restrict the number of appeals—a possible denial of justice.

It has been very earnestly represented to me that it would give much satisfaction and be a great protection to the ryot, if there were a section entered in this Regulation to empower the ryot, in case his dues were refused by the zemindars, to place them in deposit with the Collector on the principle of Sudder Dewany Circular Order, dated 20th June 1851, No. 134. I have taken the liberty to draft one which, if approved, might perhaps take its place after section XLVIII.

Appendix to Mr. Malet's opinion on the Bill.

Appendix to letter from Judge of Beerbhoom to Register, Sudder Dewany Adawlut.

[The amendments proposed in the Rent Recovery Bill are printed in italics.]

SECTION VIII to be struck out.

SECTION IX.—"If payment of rent *legally due be extorted from any under-tenant, ryot, or cultivator by illegal duress, such under-tenant, ryot, or cultivator shall be entitled to the amount so extorted, with such damages as may be thought due and costs of suit. If rent be extorted when not legally due, the sufferer shall be entitled to three times the amount with costs and damages.*"

SECTION XIX.—"Expressly authorized by any Regulation or Act, shall make application to the Collector, and the Collector, *having satisfied himself of the right of the petitioner to bring the suit, and in doubtful cases taking security,* shall proceed thereupon to inquire into the case, and pass orders in the manner" &c., &c.

SECTION XXIII.—"If he have paid such rent *without objection* for *the* three years previous to the institution of the suit."

SECTION XXXIII.—"Whilst the suit is pending, or before the final decree which may be passed thereon shall be fully executed, *provided he be not a ryot or cultivator, in which cases his holding may be attached in lieu of security,* and may convict the defendant to the civil jail, to be there detained," &c., &c.

SECTION XL.—"*Shall, in all cases, be deposited* in Court *with the plaint* or statement of claim, and if not so deposited (except, &c., &c.), the case shall not be brought on the file," &c.

SECTION XLV.—"May postpone the case, and may direct the party whose agent may have been unable to answer as aforesaid, to attend in person, *or if exempt from the attendance by the custom of the country, to appoint another agent* to attend on the day of trial, and if the person so directed to attend on the day appointed *or his agent prove incompetent,* the Collector may pass judgment as in case of default," &c.

SECTION LV.—"If on any such day the plaintiff only appear, the Collector upon proof, *in addition to the endorsement of the Nazir as required by sections XXXVIII and XXXIX,* that the summons or proclamation has been duly served," &c., &c.

SECTION LXII.—In the last line read "*three*" for "one" year.

SECTION LXV.—"When a decree is given for the delivery of a pottah, *if the person required to grant it refuse or delay so to do, the Collector's decree shall be evidence of the amount payable to such person, and an authenticated copy of the decree shall be of the same force and effect as a pottah.*"

SECTION LXIX.—Omit the words "security given."

SECTION LXX.—Add "*if a holding be attached, it must be delivered to the creditor.*"

SECTION LXXIV.—Omit the words about the limit of the warrant.

SECTION LXXV.—Add "*or if the case has been decided ex parte.*"

SECTION LXXXVIII.—For "one year" read "*three years.*"

SECTION CI.—"If the cultivator neglect to do so, *the creditor may petition the Collector, who, on being satisfied that the petitioner has a right to distrain, and that the facts are as stated, will* cause the said crops or products to be reaped or gathered, and in such case," &c.

SECTION CV to be struck out.

SECTION CVI.—For "distrainer" read "*Collector.*"

SECTION CXIV.—"The property shall be sold by auction in one or more lots, as the officers holding the sale may think advisable, *the party distrained settling the order in which the said lots are to be sold,* and if the demand with the costs of distress," &c., &c.

SECTION CXVI.—"The price of every lot shall be paid for in ready money at the time of sale, *and no moveable property can be allowed to be moved without such payment,* and in default *thereof,* the property shall be forthwith put up" &c., &c.

SECTION CXVII.—"Amount as after examination of the statement of expenses furnished by the distrainer *he shall find to be due in accordance with Sudder Dewany Adawlut's Circular Order of the 28th August 1840, No. 98, and 11th March 1842, No. 190.* The remainder shall be," &c., &c.

SECTION CXXIII.—"Vexatious or groundless, the Collector, besides directing the release of the distrained property, may award *double the amount for which it was distrained, in addition to cost of suit, by way of compensation to the plaintiff.*"

SECTION CXL.—"*All final orders which may be passed by a Collector under the Regulation shall be appealable to the Judge of the District, and all final orders passed by a Deputy Collector shall be appealable to the Collector; and the order on appeal shall be final and conclusive: the petition of appeal to be written on stamped paper of the same value as the original petition.*"

SECTIONS CXLI, CXLII, CXLIII, CXLIV, CXLV, all to be struck out, as not only useless but injurious.

PROPOSED NEW SECTION.—"*Provided also that after his rent has become due, any ryot or cultivator shall be at liberty, after the said rent has been offered to, and refused by, the person to whom it is legally payable, to deposit the said sum by a petition with the Collector, and such deposit shall be a safeguard from distraint or other legal duress on account of that rent.*"

Letter from Mr. A. W. Russel, Register, Sudder Dewany Adawlut (No. 1031, dated the 14th July 1858).

No. 1031, dated the 14th July 1858.

From—A. W. RUSSELL, Esq., *Register of the Sudder Dewany Adawlut,*
To—*The Junior Secretary to the Government of Bengal.*

IN continuation of my letter No. 947 of the 29th ultimo, I am directed by the Court to forward, for the information of His Honour the Lieutenant-Governor of Bengal, the accompanying copy of a letter, No. 183, dated the 5th instant, from the Judge of Tipperah, containing his opinion on the provisions of the Bill "to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal."

Letter from Mr. H C. Metcalfe, Judge of Tipperah (No. 183, dated the 5th July 1858).

No. 183, dated the 5th July 1858.

From—H. C. METCALFE, Esq., *Judge of Tipperah,*
To—*The Register of the Court of Sudder Dewany Adawlut.*

WITH reference to your letter No. 913 of the 23rd ultimo, calling my early attention to the Court's circular order No. 4, dated the 15th February last, which, however, was not received in this office, as I have already reported, I have the honour to submit the following report containing my opinion on the provisions of the Bill "to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal."

2. I am very doubtful whether the general effect of this law will not be the exercise of greater interference between the landlord and his tenants by the Collector, than is necessary or expedient. Under section IV, "every resident ryot and cultivator has a right of occupancy in the land held or cultivated by him, whether it be held under a pottah or not, so long as he pays the rent payable on account of the same," and under section III "they are entitled to receive pottahs according to the rates of rent for the time being established in the pergunnah in which the land is situated." I can understand and admit that ryots who have brought waste land into cultivation, and their heirs and representatives, should be thus protected, as they clearly possess a right and interest in the soil. But if a ryot be permitted to hold and cultivate land already cleared, he can possess, I think, no possible claim to enjoy it at the pergunnah rate and to compel the landlord to grant him a pottah by an order from the Collector. Such a proceeding would be tantamount to obliging the owner to part with the use of his property, merely because he had lent it for a short period or until he should think proper to ask for its return. I fear that, if the law be strictly enforced on this point, men of capital will take no interest in improving an estate, as, while many of these ryots will not have means to do so, the proprietor will be unable to settle with others who possess the necessary capital. For instance, it will be impossible to lay out a plantation of date trees for sugar, unless the proprietor is allowed to settle with men of capital, and this example might be multiplied. The zemindar, to protect himself, will no doubt resort to two subterfuges for which a loophole is allowed him by sections IV and V. He will either declare that "the land is khamar, neej-jote, or seer

Letter from Mr H. C Metcalfe, Judge of Tippeiah (No. 183, dated the 5th July 1858).

land," belonging to the proprietor of the estate or tenure and leased for a term or year by year, to a resident cultivator, or will produce a false written contract or kabuliut for the payment of specific rates of rent, which he will prove by perjured witnesses, and thus, in both cases, the rule will fail to secure the land to the ryot at the pergunnah rate. A great deal of litigation and perjury will be the consequence. Section III, declaring that "hereditary ryots holding lands at fixed rates of rent are entitled to receive pottahs at those rates," is perfectly just and should be carried out to the utmost.

3. The landholder is deprived of the power of compelling the attendance of his tenants by section VIII. There is no doubt that the permission to do so, given by the old law, has been very much abused; but at the same time it cannot be expected that the zemindar is to go to law whenever he may wish to make arrangement with his tenants regarding the rates that they are to pay him. If, therefore, he should send for his tenants and the latter should refuse to come, the landlord might be authorized to settle with some one else in case the lease has expired or no lease has been given, or in the event of the ryot's not being a hereditary ryot holding his land at a fixed rate or possessing a jungle-boree right for clearing waste land. Gardens and dwelling-houses should, however, be exempted from assessment beyond the pergunnah rates, in order to encourage improvement. Notice for enhancement, according to the pergunnah rate, should only be necessary, where no written engagement exists, in the following cases, namely, for land cleared from jungle, dwellings, gardens, tanks, places for worship or of public amusement.

4. Among the seven descriptions of suits to be instituted before the Collector under section XVII, I find that claims for diluvion may be brought. If the whole of Bengal were measured field by field and the measurements were kept among the Collector's records, as is the case in the North-Western Provinces, or more correctly speaking, *was*, previous to the Mutiny, the trial of such suits by the Revenue authorities would be quite feasible; but it is not the case in Bengal, and, consequently, it would be more advisable, under the present circumstances, to leave the decision of such suits to the Civil Courts.

5. Section XXIV fixes three years as the period for which arrears of rent may be sued for, and section XXV fixes only one year for suits for the recovery of money in the hands of an agent, or for the delivery of accounts or papers by an agent after the termination of the agency of such agent. The old summary law fixing one year for both descriptions of suits, appears to be quite long enough for a mere summary action, and the Civil Courts can, as hitherto, decide suits for a greater period than a year. The Civil Courts are a check on the Revenue Courts, and the powers of the latter ought not to be unduly extended, nor the former shorn so much of their original jurisdiction.

6. Section XXXV prescribes that in ordinary cases the Collector shall direct the issue of a summons to the defendant in a suit for rent, and that a warrant can only be issued on the application of the plaintiff if there be *primâ facie* grounds for believing the claim to be well founded, and that if a summons be issued, the defendant will abscond. Under the law now in force, a warrant is invariably issued, but if the party arrested can prove the claim to be false or considerably in excess of the proper claim, he is entitled to damages. The plaintiff might shield himself under the plea that it is optional with the Collector to issue the warrant under the proposed Act, and that therefore plaintiff cannot be cast in damages. I would, therefore, have the plaintiff clearly to understand that he will not escape damages under this plea, and such should be distinctly mentioned in the law. Under section XLIX, "any party to a suit may employ an authorized agent to conduct the case on his behalf, but no fee for any agent shall be charged as part of the costs of suits in any case under this Act." The prohibition against the *payment* of fees is not fair to the parties who engage agents, as it cannot be expected that parties to suits are to dance attendance at the Courts in person to the detriment of their own business, and it is hard that the winner should not be indemnified for his trouble and expenses.

7. Section LXXVIII enjoins that "no process of execution is to be issued three years after date of judgment." A judgment-debt is more deserving of credence than a debt which has not been proved. There can, therefore, be no reason why the execution of the former should be limited to three years instead

Letter from Mr H. C. Metcalfe, Judge of Tipperah (No 183, dated the 5th July 1858).

of twelve years, which is allowed in all other cases, and the only result of the proposed law would be to render a judgment-debt of less value in the market than hitherto, as it is notorious that judgment-debts are often sold to save trouble to the holders of recovering the claims due to them. Section XC allows the application for process against any other property, *moveable or immoveable*, belonging to the debtor if after sale of an under-tenure in execution of a decree for arrears of rent any portion of the amount decreed remains due. The execution of a mere summary decree is thus really carried too far, as a man may be utterly ruined and prevented from having the summary decree reversed by a regular suit in the Civil Court, which alone should be authorized to proceed so far in execution of a regular and deliberate decree instead of the summary Court in the execution of a mere summary decree which, owing to its summary nature, may, in many instances, be unjust. The circular of the Board of Revenue, dated the 20th March 1846, is quite sufficient for the execution of a summary decree and ought to be embodied in the proposed Act. It states that "they view as illegal the sale, in execution of a summary decree for rent, of houses and trees, or other property situated on any other land than the tenure on which the default has occurred and on account of rent for which decree has passed." The same objection applies to section XCIV, "in the execution of any decree for the payment of money under the Act not being money due as arrears of rent of a saleable under-tenure." Further, all the enquiries regarding the ownership to the immoveable property to be sold in execution of a summary decree, would be far better performed in the Civil Court in execution of a regular decree; and much less mischief would be done in the latter case, as the transfer of real property from one party to another, should always be made with great caution and not as if it were a mere bale of goods. An estate is loved as the house of the proprietor and of his ancestors, and the owner hopes to hand it down to his children and his children's children, and it is no light matter to deprive a man summarily of it, with all his house associations destroyed by the hands of the purchaser, a stranger, perhaps, of a different country, caste, and creed, and afterwards, when justice may be done him in the Civil Court, to restore it to him "with all his household goods shattered round him."

8. Section CIII declares that the distranier may distrain property proportionate to the amount of the arrear with cost of the distress, but no penalty for excessive attachment is mentioned. The distrainer will, therefore, treat the prohibition with contempt unless restrained by a penalty. Section XVI, Regulation XVII, 1793, should be incorporated in the proposed Act. It is worded thus—"The distress levied shall not be excessive, or, in other words, the property seized shall be, as nearly as possible, proportioned to the amount of the arrear. If any person vested with the power of distraint shall attach any property the value of which shall be disproportionate to the arrear, and it could be proved that he could have seized other of less value and which would have been sufficient for the liquidation of such arrear, the Court shall award damages to the owner, according to the circumstances of the case, with all costs of suits."

9. It is laid down in section XCVII of the proposed Act that the produce of the land is held to be hypothecated for the rent payable in respect thereof, and that it may be distrained and sold for arrears by the party entitled to receive rent immediately from such cultivator. The power granted by the old law to distrain moveable property is thus taken away, and very justly too, as much oppression is committed by distrainers under the existing law, who may and do plunder a ryot of all he may be possessed of, and then, to save themselves from the criminal Courts, give in a list of a few of the articles to the Sale Commissioner as attached by them for rent. Damages are awarded under section XIV, Regulation V, 1812, if ploughs and other instruments of husbandry, bullocks, and other cattle employed in agriculture, seed, grain, and the tools of artisans, are attached. As it is contemplated by section CI to restrict distraint to the produce of the land from which rent may be due, damages should be very properly awarded in case any other property be attached by the distrainer as laid down in section CXXVII. According to section CVI, distress is to be withdrawn if defaulter tender payment of arrear and expenses of attachment prior to the day of sale, but damages, which are omitted from the Act, should be awarded if he does not do so. Under section CXII,

Letter from Mr. H. C. Metcalfe, Judge of Tipperah (No. 183, dated the 5th July 1858).

distress is also to be withdrawn on receipt of Collector's certificate that the owner has executed a bond, with security, binding himself to pay whatever sum may be adjudged to be due from him with interest and costs of suit; but damages ought, in this case also, to be awarded in the event of refusal. Section CXXVIII prescribes damages against any person who is not empowered as proprietor, or farmer, or as employed under a written authority by a person so empowered to distrain, that does so, as well as subjecting him to the penalties of a criminal trespass. This is a very necessary addition to the old law, as much oppression is practised by men who set up men of straw to distrain and carry off the property themselves. But another great evil should be guarded against. A creature of the distrainer is often made a co-defaulter with the real owner of the attached property and the attachment is fraudulently made in their *joint* names, and the property given up to the creature of the distrainer, who is a mere man of straw, under the pretext of security being furnished by him. The property should be restored on the *joint* receipt of all defaulters, otherwise the distrainer should be held responsible if one of the defaulters can prove that the property is his only. The penalty, in section XXIV, Regulatiou XVII, 1793, a distrainer is liable to, if he purchases the property which he has himself distrained, should be retained in the proposed Act, namely, restoration of the property to the defaulter or the full value of it, forfeiture of the arrear for which the property may have been attached, and all costs. As also the penalty the Sale Commissioner is liable to for doing the same thing, under Section XXIV, Regulation XVII, 1793, namely, restoration to the defaulter of the property or its full value, forfeiture of the purchase-money, which shall be appropriated to the liquidation of the arrear, all costs, and dismissal from office.

10. Unless a suit be brought for enhancement of rent after the service of the usual notice in the commencement of the year, the summary jurisdiction of the Collector in suits for rent should be limited to enforcing payment of the rents paid in past years, except on *bonâ fide* written engagements to pay more, as declared in section X, Regulation VIII, 1831, and under section XV of the same law, he should suspend his proceedings and forward the record of the case to the Judge, if it be brought to his notice that a regular suit is pending before the Judge for the rent. These two sections ought to be incorporated in the proposed Act. As also section VI of the same Regulation, namely, that the admission of regular suits to contest summary awards of the Revenue authorities is restricted to one year from the date of the summary decision.

11. Under-tenures, except putnis, are sold under Act VIII of 1835 in execution of summary decrees, and it is proposed to sell them under the present Act too. But as Act VIII of 1835 merely vested the Collector with the power to effect these sales, hitherto held by the Judge under clause 7, section XV, Regulation VII, 1799, the latter law only permits the sale of under-tenures or shikmis at the end of the year. Some change is here required, as zemindaris are now sold quarterly. The dates of sales of under-tenures under execution of summary decisions should consequently be quarterly on the days previous to the last days of payment of the revenue due from zemindaris to the State, and the change would be a great help to zemindars who are called upon by Government to pay quarterly under the penalty of losing their property, but cannot at present put up a shikmi for sale in execution of a summary decree until the termination of the year.

12. It is provided under clause 2, section XVIII, Regulation VIII, 1819, that "when a summary suit for arrears alleged to be due, may have been instituted against a talukdar or against a farmer, or against the holder of any other intermediate tenure between the zemindar and the actual cultivators, it shall be competent to the party who may have instituted such suit (whether the alleged defaulter may have been arrested or not) to send a sezawul of his own authority to attach and collect the rent of the actual cultivators immediately from themselves, provided, however, that such power of attachment shall not be exercised unless the arrear of rent claimed in the summary suit, shall have been actually due for one entire month before the date of attachment and shall not be less in amount than the entire kist of the month on account of which the arrear may be claimed." This power of attachment of under-tenures is harsh and ought to be taken away, as the tenure can be sold for

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arrears, and the proprietor of the zemindari to whom the rent may be due is secure of his rent; but in the case of ijarahs, dur-ijarahs, and kut-ijarahs, which are so common in Tipperah, the power of attachment on the part of zemindars should be retained for the protection of the latter and of the farmers from their under-farmers. A zemindar can generally take good security from a wealthy farmer, but the latter is obliged to let out village by village to the headmen who will not give security and who can combine with the cultivators to resist in every possible way any interloping dur-ijaradar or kut-ijaradar who are deterred in consequence from taking dur-ijarahs and kut-ijarahs. The farmer will be completely at their mercy if he had not the power of attachment, as the collections would be made away with by the dur-ijaradar or kut-ijaradar, who, by antedating "*hebas*" to his relations of all his personal property, prevents the farmer from touching the same in the recovering of his claim. It is also difficult to arrest his person from the influence he possesses with the ryots, who always give him timely notice of everything. It is these "*matabars*," as they call themselves, that give zemindars so much trouble, and it is the interest of the zemindar or large farmer to pay them over by letting them hold dur-ijarahs or kut-ijarahs, but they require much looking after and would be quite uncontrollable if the power of attachment were taken away in these cases.

13. The proposed Act in every other respect than what has been commented on above is good, particularly the course of procedure to be followed in summary suits and suits of distraint.

No. 2214, dated Allahabad, the 23rd December, 1858.

Letter from Mr. W. Muir, Secy. to Govt., N.-W. Provinces (No. 2214, dated 23rd December 1858)

From—W. Muir, Esq., *Secretary to Government, North-Western Provinces,*
To—*The Clerk to the Legislative Council.*

Letter from Secretary, Sudder Board of Revenue, North-Western Provinces, No. 529, dated 4th December, 1858.
Minute by Senior Member, dated 5th May, 1858.
Ditto by Junior Member, dated 14th December.
Note by Secretary to Government, North-Western Provinces, dated 26th March.
Memorandum by Mr. Charles Currie.
Notification, dated 17th September, 1856.
Circular Order by the Sudder Board of Revenue, dated 26th idem.

I have the honour, by direction of His Excellency the Right Honourable the Governor General, to forward to you, for submission to the Legislative Council, copies of the documents marginally noted, having reference to the Bill to amend the law for recovery of rent.

No. 529, dated Agra, the 4th December, 1882.

Letter from Mr. W. H. Lowe, Secy. to the Sudder Board of Revenue (No. 529, dated the 4th December 1858).

Fram—W. Lowe, Esq,, *Secy. to the Sudder Board of Revenue, N.-W. Provinces,*
To—*The Secretary to Government, North-Western Provinces.*

I am desired by the Sudder Board of Revenue to acknowledge the receipt of your letter No. 1834, dated 27th ultimo, respecting the draft Act for the recovery of rent, and to forward copy of a Minute by the Senior Member on the Bill, dated 5th May last, of which copy was transmitted to the late Junior Member, at his request, for his remarks, to be added and transmitted to Government, which the Board were under the impression had been done.

2. On a review of the draft Act, the Senior Member does not see any ground to add to or modify the views formerly expressed on the proposed Act, which in correcting confusion and diversity of practice, and checking the present license of oppressive Acts peculiarly odious[1] to village communities, will be a most valuable improvement on the present Code.

[1] See paragraphs 100 and 101—Landed properties under Government officers.

There is only one point recently mooted,—the question of selling landed properties in satisfaction of debt, and of substituting temporary exclusion for permanent and compulsory alienation which bears on the provisions of the Act for realising the amount of summary decrees by sale of intermediate tenures; this is a very difficult and important question, requiring much consideration. Whatever be determined as to the practice of the regular Civil Courts will, of course, extend to the Revenue Courts.

Minute by Mr. E. A. Reade, Senior Member of the N.-W. Provinces Board of Revenue.

Minute by the Senior Member of the Sudder Board of Revenue on the Bill to amend the law for recovery of rent.

UPON a careful perusal of this important and excellent draft Act, I find only a few points on which its provisions appear to me defective or to require modification with special reference to the North-Western Provinces.

These I note in the order of the sections of the draft.

SECTION IV.—It is very desirable that this section should be so framed as to cure a grievous defect of past legislation, which has maintained an arbitrary distinction between resident and non-resident ryots, or, in official language, of the vernacular Chuppurbund or Khud-kasht, and Pai-kasht ryots, and which distinction has been made a means of much hardship and injustice to the peasantry.

For the term "mouza," equally applied to a township, or a tract inhabited or uninhabited, the word "village" is the stereotyped translation. It has helped probably to this distinction, and to some confusion of ideas.

Practically, according to the usage of the country and where good faith obtains, the inherent right of occupancy of the resident and non-resident ryot is the same, provided always that both are under common bond of fealty to the landowner. This it is, in the main, which constitutes the difference between the ryot who has a right of occupancy and the ryot who is only a tenant at will—a distinction immediately understood by the use of the vulgar terms *pucka* and *kutcha*, applied equally to Chupperbund and Pai-kasht ryots.

Obviously, where the mouza is not inhabited or uninhabitable, all ryots are non-resident, yet such are as much yeomen, with right of occupancy of lands which they have cultivated for generations, as those who have as long cultivated lands in villages, properly so called, where they reside.

Then, again, it is quite possible that, by division, a tract of land may be severed from the parent estate, a new homestead raised; and yet surely the rights of the old cultivators, who continue to reside as formerly, are not to be affected by the change, though they may be non-resident ryots of the newly-constituted mouza.

It is difficult to find any term in the English language which gives the significance of the vulgarisms above mentioned, so perfectly understood by the agricultural class amongst themselves; but it is really most necessary that the Legislature should provide a remedy against the injustice of auction-purchasers mercilessly bent on rack-renting,—ousting ryots from their fields only because they happen to be called Pai-kasht.

The first part of section IV might, I think, be thus amended.

Every ryot and cultivator "who, by residence, or if not resident, by the usage of the country, has a right of occupancy in certain lands held or cultivated by him, retains that right of occupancy, whether it be held under, &c."

It will be necessary, if this be approved, to alter the expressions in section V, so as to avoid the distinction therein, also at present made in favour of resident ryots only.

SECTION XXI.—This incidental section of the Act is one of much importance, and it is most desirable that the cognate provisions of the Regulations of 1795, Benares Province, and of 1803, Ceded Provinces, should be included. In the Benares Province, especially, there have been many scandalous exemptions wholly illegal, which landholders have found difficulty in rectifying; and on the other hand, opposite attempts of landowners to resume rent-free parcels lawfully exempt. The section requires only the addition of "section 10, Regulation XLI, 1795, and section 6, Regulation XXXI, 1803."

SECTION XXIII.—It appears necessary in this section to provide for two points—

1st,—against the very common practice of entering, for years, a larger sum as paid, than actual payments in the village papers, as a contrivance for securing enhancement at some future date; and

2nd,—for the great hardship of deterioration by natural causes, such as arenaceous deposit by inundation, or percolation from canal water.

The following amendment of the concluding part of this section appears to me desirable:—

"Under section III of this Act, if it be clearly established that he has paid such rent for three years, previous to the institution of the suit. Provided that,

in cases of deterioration from natural causes beyond the cultivator's contract, the Collector shall have discretion to determine such abatement as he may consider equitable."

Minute by Mr. E. A. Reade, Senior Member of the N.-W. Provinces Board of Revenue.

SECTION XXVII.—The agency of mukhtárs is permitted, and cannot altogether be avoided; but in summary suits, either such powers of attorney or security bonds are absolute necessities, and the present rules of these provinces,—Circular Order, Sudder Board of Revenue, 25th October, 1850,—demanding that these documents should be engrossed on a stamp of 8 annas value, should, I think, be maintained.

SECTION CI.—The provisions of section XCVII and sequent are most important and desirable in restricting the power of landholders and others to distress of produce only; but section CI makes no provision for certain descriptions of crops, such as sunn, tobacco, sugarcane, and some esculents which are not stored or stacked. In such cases, the section should empower sale of the standing crop in convenient lots.

SECTIONS CXLIV and CXLV.—I think it desirable that a clause should be inserted empowering the Government to transfer the jurisdiction of all or part of a district, in case of necessity, to the Commissioner of Land Revenue.

Dated Allahabad, the 14th December, 1858.

Minute by Mr. W. Muir, Junior Member of the Board of Revenue, N.-W. Provinces (dated the 14th December 1858).

Minute by W. MUIR, Esq., *Junior Member of the Sudder Board of Revenue, North-Western Provinces, on the Bill to amend the Law of Rent.*

ON the 26th March last, as Secretary to Government, I submitted to the Right Honourable the Governor General a note upon this Bill, together with a letter received from Mr. Charles Currie, Officiating Collector of Boolundshuhur.

2. I now place these with this minute; and add also the notification of the late Lieutenant-Governor, dated 17th September 1856, and the Circular Order of the Board dated 26th idem. I would recommend the embodiment of the principles therein laid down in the new enactment.

3. Adverting to Mr. Reade's remarks on section XXIII, I would refer to my proposal on section III, that the proprietor and the cultivator be each allowed the power of bringing suit at any time to determine whether circumstances have arisen to justify the demand for an alteration in the amount of rent.

4. I agree with the Senior Member that mooktarnamahs and security bonds should be written on 8-anna stamp paper.

5. I would not alter the course of appeal as suggested by Mr. Reade in sections 144 and 145.

6. I omitted in the former note to express my approval of the limitation of arrest in section 31 to cases in which not only is the claim *primâ facie* well founded, but in which there is reason to expect that the defendant will abscond if a summons only were issued.

Dated the 26th March, 1858.

Note by Mr. W. Muir, Secy. to Govt., N.-W. Provinces (dated the 26th March 1858).

Note by W. MUIR, Esq., *Secretary to Government, North-Western Provinces, on the Bill to amend the Law relating to the recovery of rent (read a second time, 31st October 1857.*

There are some important improvements of the law in this Bill.

2. The constitution under section XVII of the Collector's Court as a branch of the Civil Judicature, in which all suits affecting rent shall be laid and disposed of in first instance, is a right step.

3. I also approve the regular appeal from such Courts to the Civil Zillah Judge under section CXLIV.

4. Our *practice* in regard to suits for enhancement of rent has been much improved of late by the Circular Order of the Sudder Dewany Adawlut No. 1407, dated the 26th July, 1856[1], which prescribes as a rule of procedure that whenever a plaint of this nature is filed in any Civil Court the Collector shall be called upon to make a full investigation and furnish a report "both as to the right of enhancement and, where the right is found to exist, as to the amount of increased rent fairly demandable."

[1] See also Sudder Board's Circular No. 15, dated 5th September, 1856, to give effect to the Courts Rules.

Note by Mr. W. Muir, Secy to Govt, N.-W. Provinces (dated the 26th March 1858).

5. This course is not only prescribed as a necessary preliminary in all cases of *enhancement*, but is (paragraph 2) recommended to be followed in other classes of "suits connected with land rent."

6. This improved rule has hardly had any time to show its good effects, in consequence of the late disturbances. But there can be no doubt that, if the revenue authorities conduct their investigations in a full and careful manner, lay the result in a lucid and comprehensive form before the Court, and accurately state the conclusion which the facts warrant, the judgment of the Civil Courts is likely to be as good in the long run as if the power of actual decision were placed in the hands of the cultivators.

7. At the same time the adoption of the principles of the Bill would simplify the procedure, and accelerate the decision by placing the whole trial in the hands of the Collector, instead of the present practice which involves the delay of a reference to him.

8. On the other hand, the tendency of the Collector's Court, as a Court for the hearing of Civil causes, is to become over-summary if not careless, and to give forth crude and *ex parte* decisions. The procedure enjoined by the present Bill might, however, tend to diminish this evil, and introduce more consideration and greater attention to regularity of procedure.

9. I observe, however, that claims for enhancement do not come under section XVII. The zemindar is supposed to adopt his own remedy by issue of written notice of enhancement (section X), and the only case for trial by the Collector is where the cultivator objects (section XI), and the suit is thus laid as one against "excessive demand of rent" (item 3, section XVII).

10. I think it would be an improvement to allow suits to be laid by a zemindar who is desirous of trying his right to enhance a cultivator's rent; because he may know very well that the cultivator will object, and that the notice would be a mere form; and he may prefer at once to bring his case into Court.

11. In regard to the present procedure in regular suits to try the Collector's summary decision in suits for rent, the Bill is an improvement in so far as, by section CXLIV, the appeal must be taken up by the Zillah Judge himself. The rule established by section X, Regulation VII, 1832, by which the summary decision of a Collector's Court can come under appeal in a Native Judge's Court of the lowest scale, has had, I think, a generally injurious tendency.

12. I may also remark that the practice of our Revenue Courts has been greatly enlarged and improved in respect of cases of ouster, and generally in suits affecting cultivating possession by late orders[1] which extend the Collector's jurisdiction to that class of cases, and lay down the principles on which his summary decisions should be passed. Still the Bill would be an improvement in respect of these suits also, as it would confine the original jurisdiction entirely to the Collector's Court; whereas at present such suits may be at once removed to the Civil Court by the institution of a regular plaint.

[1] Government Notification No. 1678A, dated 17th September, 1856. Sudder Board's Circular Order No. 17, dated 26th September, 1856 (copies enclosed).

13. I agree with Mr. Currie in that part of the observations contained in his memorandum which impugns section III. The only standard given for fixing disputed rents at is the old one of pergunnah rates, or customary rates payable for similar adjacent land.

14. The subject is discussed in paragraphs 134–137 of the "Directions to Settlement Officers." Mr. Thomason there remarks that "both these rules" (*i. e., pergunnah* and *adjacent* rules) "are of difficult application." Rent is not a thing to be reduced to any such hard and uniform rule as this. The capacities and advantages of adjacent fields, of apparently similar soil, may greatly differ. Proximity to a market, or facility of procuring manure, retentiveness of moisture, opening out of new roads, supply of new means of irrigation, are specimens of the natural, as well as artificial, causes which render it impossible to fix arbitrarily the rent of land by the standard proposed, and which may frequently cause the value of the same land to vary at different times. The caste and habits of the cultivators are also elements which cannot be overlooked.

15. The proprietor should have the power of trying these points,—(1) whether the rent which any cultivator having the right of occupancy has

been paying is a fair and adequate rent; (2) and further, whether, admitting the rent to have been formerly fair, circumstances have not since arisen to justify an enhancement. Note by Mr. W. Muir, Secy. to Govt., N.-W. Provinces (dated the 26th March 1858).

16. The cultivator having right of occupancy should also possess the power of suing to determine whether circumstances have not arisen to deteriorate the value of his tenure and justify him in demanding a reduction in the prescriptive rent.

17. For the decision of such cases, a punchayet will *generally* (*not always*) be the safest mode of procedure. The Collector should be authorized either to decide such suit himself or refer it to a punchayet. The decision of the punchayet should be final, unless the Collector should, from any cause, see reason to disapprove it, in which event it should be reversible by the Commissioner upon the Collector's report.

18. Section IV goes upon the fallacy of regarding every "*resident* ryot and cultivator" to have a right of occupancy. The subject has been fully discussed in the correspondence which preceded the issue of the Board's Circular dated 26th September 1856. The correspondence, including the opinion of all Commissioners and of all Collectors of experience, was ordered* to be printed. I have not the collection by me at present, but it distinctly proved that *residence* was not a necessary or expedient condition of right of occupancy. The rule was, upon this correspondence, laid down which the G. O. of the 17th September, and the Board's Circular of 26th September, follow, *viz.*, that 12 years' occupancy gives a fixed title. The conditions and precautions attached to this rule were carefully considered and prescribed in the Board's Circular, and I would recommend that they be taken into consideration by the Legislative Council.

* Probably burnt at Secundra.

19. Section V is liable to the same objection.

20. The expressions used in the 2nd clause of section VI are liable to the exception taken by Mr. Currie.

21. I do not agree with Mr. Currie in disapproving the notice in section X being issued through the Collector. It secures a public and certain notification.

22. The last clause of section XI falls under the objections before explained.

23. In section XIV for the "Bengal" and "Fussily" year, should be substituted the agricultural year. (See G. O. No. 1678A, dated 17th September, 1856, paragraph 4.)

Memorandum by MR. CHARLES CURRIE, *on the Bill for amending the Law relating to Rent.* Memorandum by Mr. Currie on the Bill.

THE re-enactment of such portions of the old Regulations as are still in force, and their embodiment into a concise form, is a great *desideratum*. The proposed Act, therefore, on arrears of rent is a move in the right direction.

The question, however, is one of great importance, and demands the deepest consideration of the Legislature.

Advantage should be taken of the occasion to review the whole subject connected with rent of land, and carefully to consider whether the Regulations are capable of being modified or altered, not merely in words, but in principle.

To arrive at any just conclusion on this point it will be necessary to consider whether the system laid down in the Regulations is the best calculated to develope the resources of the country, and is based on true principles of political economy.

In considering this subject, we must not only review the results of the administration of the last 50 years, but we must keep in view the changes which are likely to ensue from the convulsions, caused by the late mutinies, in the proprietary body of the country and the probable increase of European landholders.

The laws relating to the determination of the rent of land were enacted at a time when, owing to the recent conquest or cession of the country, we were but little acquainted with the habits and customs of the people, and quite ignorant of the internal economy of village communities. We were aware that, under native rulers, the resources of the State were principally drawn from the land. We were also aware that the rulers placed no limit on their exactions from the landholders, and it was natural that the landholders should endeavour to obtain from their tenants as much as they possibly could. The result was

Memorandum by Mr Currie on the Bill

that large tracts of land were left uncultivated, as people do not like to sow without any hope of reaping.

The Government, alive to the errors committed by the native rulers, and to their consequences, wisely determined to limit their demand on the land. In so doing they acted but justly in binding the landholder to limit his demand on his tenants. This was the more necessary because the common ryots of the country, unaccustomed to the exercise of any of the rights of freemen, could not at first comprehend the fact that their landowners had no right to make exorbitant demands of rent.

But the system of arbitrarily determining the amount of rent to be paid by tenants is contrary to the true principles of political economy and should not be adhered to longer than is absolutely necessary.

The necessity no longer exists. The large tracts of land which were lying waste when the country came under our rule have been brought under cultivation. The ryots, accustomed during a term of 50 years to refuse to accede to exorbitant demands for rent, have no longer any need of the aid of legislation in the determination of the amount of their rents. They will no longer hesitate to have recourse to the Courts in the event of any dispute arising between them and their landowners; and landowners will fail to obtain tenants if they demand rates higher than will admit of fair profit to the cultivator.

The country may therefore be said to have obtained a natural state, and there appears no necessity for a deviation from the acknowledged principles of political economy. Rent is the surplus profits of land after deducting the wages of labour and the interest of capital expended on the land: the amount of rent, therefore, will vary according to the habits of industry and frugality of the cultivators, and the amount of capital expended in cultivation. Any attempt arbitrarily to determine the rent of any land is an infringement on the rights of the landowner, and liable to obstruct the development of the resources of the country.

The truth of this last remark will be more obvious if we consider the effects likely to be produced on English capitalists by the present laws regarding rent. An English capitalist taking the proprietorship of any land in this country would do so with the intention of introducing, if possible, the European system of manuring, &c., or at any rate of so expending his capital on the improvement of his estate as thoroughly to develope its resources. What would he say, however, if he found that, notwithstanding all his expenditure, the Government refuse to allow him to enhance the rent of his land beyond the rate current in the pergunnah, *i.e.*, the rate demanded by indolent and careless landlords, who never spent an anna on the improvement of the land?

That it is the interest of Government to encourage European talent and capital I think no one will deny; but the present system of fixing rent is a complete bar to its introduction.

The same remarks apply, though in a limited degree, to native landowners. At present, but few landowners expend any capital in the improvement of any land, except perhaps that in their own proprietary occupancy. There is no saying what might be the effect of removing the present hindrances to an enhancement of rent, more especially when they have the example of European enterprise more constantly before them.

The system propounded in the proposed Act, of forcing the landowners into the Courts, I think, bad. The Courts should only be had recourse to when disputes arise; non-interference should be the general rule. A forced resort to the Courts renders them odious to the people, and they have less confidence in bringing forward real grievances.

It is a bad compliment to pay to our administration, to suppose that some of the laws cannot be relaxed without a recurrence to the former system of oppression and violence. I think much greater freedom of action might now be granted to landowners without any evil consequences.

The particular instances in which these preliminary observations are applicable will be noted in the detailed remarks on the different sections of the Act.

Section 3.—This is an attempt arbitrarily to determine rates of rent, and appears to me to be an infringement of the rights of the landlord, and liable to

deter landholders from the employment of capital in the improvement of their estates.

It has been shewn above that the amount of rent to be paid should be left to be settled between the landlord and the cultivator. No landlord will obtain a tenant at rates higher than will admit of ordinary profit to the cultivator.

Hereditary cultivators are an exception to the general rule. Their rights are peculiar to the country, and the landholders are aware that they cannot raise their rents. The fact, however, of their being tenants over whom the landlord possesses no rights beyond the receipt of a fixed rent, is to be deplored, and the class should not, in my opinion, be encouraged.

A cultivator holding a few acres of land cannot be expected to possess capital sufficient to enable him to improve that land to the same extent as the large landed proprietor. But a landholder will never attempt to improve the lands of an hereditary cultivator, knowing that his money would be sunk without a possibility of any profit accruing to himself.

The existence of hereditary cultivators and their rights cannot be denied, and these rights should be upheld by legislation, I should leave out the first portion of this section, but after "at those rates;" the following might be substituted :—"All other ryots and cultivators are entitled to receive pottah-according to the rates of rent which may be agreed on by them and the lands holders. If the landholders and ryots cannot come to terms, the rates of rents should be determined by arbitration under the orders of the Collector. Should the Collector be of opinion that the rates fixed by the arbitrators are unfair, he may himself determine the rates, being guided in his decision by the rates of rent for the time being, &c."

Section 5.— On the principle above set forth respecting hereditary cultivators, I would not grant a right of occupancy until after 12 years. The practical effects of this section as it stands will be materially to injure the rights of landholders. A farmer or mortgagee will obtain possession of a village for a term of years, and will give certain lands to his relatives at a fixed rate—probably a nominal one. Under the terms of this section, these men would acquire the right of occupancy during the incumbency of the farmer or mortgagee, and the rightful owner, on re-entry, will be unable to enhance the rents.

Section 6.—The latter portion of this section appears to me to be superfluous, and I do not see why the simple tender of a pottah should entitle the tenderer to receive a kubooleut. It is as much as to say that the cultivator has no choice in the matter, but that, if given the offer of cultivating certain fields, he must do it. No option is left by the wording of this section.

Section 10.—The Collector has already quite sufficient work on his hands without being made a general server of processes. The notices mentioned in this section should be served by the landholders, contested cases being alone left for the decision of the revenue authorities. I would therefore alter this section, expunging the words "shall be served by order of the Collector," &c., and let it run thus: "such notice shall, if practicable," &c.

Section 11 is a clear infringement of the rights of proprietors, and nullifies the preceding section. The object of obliging landowners to issue a notice of intended enhancement of rent previous to the commencement of the agricultural year is to enable the cultivator to accept or refuse the terms, and thus allow of the landholder making proper arrangement for the cultivation of his land. If, however, the cultivator is to be allowed to retain possession of his land and to contest the enhanced rate of rent after he has sown and reaped, the landholder might as well save himself the trouble of notifying his intention of raising the rent.

This section might run thus:—"Any under-tenant, ryot, or cultivator on whom such notice as aforesaid has been served may contest the fairness of the rates demanded within 15 days of the date on which such notice as aforesaid may have been served. The rate of rent shall in such cases be decided according to the rules laid down in section 111, *i. e.*, arbitration, &c."

Section 16.—Why hamper landholders with such restriction as this? If this section stands, suits for ouster will resolve themselves into the simple ascertainment of the fact of a decree having been obtained or no. Without such decree no ouster can, under the law, be legal. The principle of non-

Memorandum by Mr. Currie on the Bill.

interference, as set forth in the preliminary remarks, is here entirely abrogated. I would expunge this section.

Section 17.—The confining suits arising out of questions of rent, to the Revenue Courts, has my warmest approval.

Section 18.—If the civil judicial work is to be entrusted to the District Officers, this section has my approval. If, however, the Civil Courts are to remain distinct from the District Courts, I do not see any necessity for the change made by this section in the present law. Suits for money should be confined to one Court or the other,—not be admissible in either or both. The Collector's duty should be confined to the enforcement of the rendition of accounts. The accounts once rendered, all suits respecting them should lie in the Civil Court.

These remarks will, of course, not be applicable if the Civil Courts are to be done away with.

Section 23.—After the words "during the tenancy," I would insert "excepting in those cases provided for by Section X." I would expunge the latter portion of this sections from "although such rent," &c.

Section 24 is inexplicable—I mean, as regards the last portion.

Section 25.—I would erase the words "for the recovery of money in the hand of an agent or" for reasous above given.

Section 26 should provide for the inclusion in one plaint of any number of defendants, in cases in which the issue is the same for all.

Sections 27-106.—The sections contain many good rules, especially section 77 limiting the term for execution of decrees. Section 97 declaring the produce of the land to be hypothecated for the rent. It should, however, be ruled that the crops of any harvest are primarily hypothecated for the rent due on that harvest, and are not liable to distraint for arrears due on any former harvest or for the recovery of sums due for decrees of Courts until the demand for the current harvest has been paid. The point may appear an insignificant one, but considering that land often changes hands between harvests, the crops are therefore frequently distrained for two demands. In some instances I have known them distrained by order of Civil Courts for the recovery of money due on a decree of former years, to the entire detriment of the party to whom the rent for the current kist was due.

Section 107.—Why introduce the Civil Court Ameen? "No man can serve two masters," consequently the Ameen will either serve the Civil or the Revenue Court, and collisions are likely to occur between the two Courts regarding the services of the said Ameen. By whom is the Ameen punishable? Are both Courts to have the power of fining or dismissing him for malpractices? and does such dismissal by one Court hold good for the other? A Sale Ameen might be appointed, and be entirely under the orders of the Collector.

Section 144.—The admission of appeals to the Zillah Judge is a new element, and one the advantage of which I cannot see. Judges have at present no revenue jurisdiction whatever, and therefore the appeals of one class of revenue cases lying to the Judge while all others lie to the Commissioner is rather likely to produce confusion. I most sincerely hope that Zillah Judges will cease to exist, in which case no more may be said regarding them.

Notification by the N.-W. Provinces Govt., (No. 1678A., dated the 17th September 1857.)

No. 1678A, dated the 17th September 1857.

NOTIFICATION—By the Government of the North-Western Provinces.

THE Hon'ble the Lieutenant-Governor is pleased, under the discretion vested in the Government by section 20, Regulation VII, 1822, to invest Collectors and Officers exercising the powers of a Collector in the ceded and conquered provinces with an authority under that section, and under section 14 of the same Regulation, and also under section 3, Regulation IX, 1825, to invest the like officers in the Province of Benares with authority to receive, and determine summarily, subject to the limitation declared by clause 3, section 20, Regulation VII, 1822, suits relative to disputed occupancy of possession between zemindars and cultivators holding under them, under the following conditions and restrictions.

2. When a zemindar sues in the Revenue Court to eject a cultivator, the right of the zemindar shall be enforced, so long as the cultivator has not himself or by descent held possession for 12 years, without written terminable lease, of the field or fields of which it is proposed to dispossess him, from a well-estab-

lished usage of the district or certain of the village held to have a fixed and hereditary title to the occupancy of such fields, or of other fields of equal value in their place; or is not a tenant under an expired lease, the conditions of which have been duly fulfilled.

Notification by the North-Western Provinces Government (No. 1678 (A) dated the 17th September 1857.)

3. When a cultivator sues against dispossession, within a year from the cause of action, he shall be restored, saving where the dispossession is shown to have taken place in due course of law; or before the cultivator had been more than one year in possession; or at the close of a written terminal lease; or where the occupancy has been of less than twelve years without lease. Provided that in the last-mentioned case the ejectment of a cultivator shall not be allowed, excepting at the close of the agricultural year, as defined in the next rule.

4. At whatever period during the year a suit under Rule 2 may be adjudicated, no tenant shall be ejected, in execution of the decree passed in such suit, from land occupied by him for the purposes of cultivation, excepting at the close of the agricultural year; that is, after the reaping of the rubbee crop on such land, and before the 1st of July following.

No. 17, dated the 26th September, 1856.

Circular Order by the Sudder Board of Revenue, North-Western Provinces.

Circular order by the Board of Revenue, North-Western Provinces (No. 17, dated the 26th September 1856.)

THE Sudder Board of Revenue, North-Western Provinces, are pleased to call the attention of revenue officers in these provinces to the Notification issued by the Hon'ble the Lieutenant-Governor, No. 1678A, dated 17th September, investing all Collectors and Officers exercising the powers of a Collector with authority under sections 14 and 20, Regulation VII, 1822, to decide, under the restrictions therein defined, summary suits relating to dispossession.

2. It will be observed that the rules embodied in the above notification, supersede the principle laid down in paragraph 18, section 2, of the Board's second printed Circular, dated 3rd January 1840, and also paragraph 129 of "Directions to Settlement-officers" and paragraph 278 of "Directions to Collectors."

3. It is there held, that a ryot, however temporary his right of occupancy may be, cannot legally be ousted by the zemindar, otherwise than by a regular suit; and, if ousted, in any other manner, that the Collector "is bound to maintain his possession."

4. Power has now been conferred upon the revenue authorities to entertain the suit of a landlord claiming his right of dispossession, and, in certain circumstances, the landlord's right to eject a tenant, of his own motion, has also, in so far as regards the Revenue Courts, been recognized. The zemindar is, therefore, no longer shut out in respect to this class of cases from the summary Court and driven to a regular suit.

5. The correspondence which has led to this desirable change of procedure will be circulated, under instructions from Government, for general information. But it will be useful on the present occasion to add a few explanatory remarks.

6. *Rule II.*—The right of the zemindar to sue in the Revenue Court, in order to eject a tenant-at-will, will only be recognized when the tenant has been less than twelve years in possession. Where satisfactory proof of twelve years' uninterrupted possession is brought forward, the summary suit will be dismissed, excepting where the possession is under a written terminable lease.

7. Where the possession has lasted for a shorter period, and there is no well-supported claim on the part of the ryot, in virtue of agreement or lease, to continued occupancy, a decree will be given in favour of the zemindar. The question is independent of the payment by a cultivator, during a term of twelve years, of an unvarying amount of rent. Continued possession for that period, though at different rents, will, equally with occupancy at a uniform rent, bar the summary suit for ejectment.

8. Exception from the growth of prescriptive right has been made in the case of tenures upon terminable lease. Occupancy, extending by a single lease, or by renewed leases for a period exceeding twelve years, will not bar the zemindar's right to claim ejectment on the expiry of such leases. But there may, in the case of the same occupant, possibly be cultivating prescriptive rights independent of the lease. A pottah for a limited number of years may have been given to a cultivator already possessing a fixed right of tenancy.

Circular Order by the Board of Reveeue, North-Western Provinces, (No. 17, dated the 26th September 1856.)

It will in such case be for the Summary Court to determine whether the occupancy is in virtue of the pottah alone, or whether there is also a right of occupancy independent of the pottah. In the event of such a right being proved, the landlord will not be entitled to claim ejectment.

9. An exceptional and comparatively rare class of cases is alluded to in the words in the second rule, cited marginally. In some quarters it is reported to be customary for a cultivator with prescriptive rights of occupancy to change his holdings, retaining, unaffected with respect to the new fields so occupied, the same prescriptive right of occupancy which he possessed in his original holding. Where this custom is found to exist, it will be carefully respected, and possession upheld accordingly.

* "Or of other fields of equal value in their place."

10. In all cases, excepting those indicated in the previous paragraph, the question of whether possession shall be upheld or not will depend upon continued occupancy of the same fields. There may thus be prescriptive rights with respect to one portion of a cultivator's holding, and no such rights with respect to another portion.

11. Possession by any party from whom the present occupant may have received his holding in ordinary course of inheritance, will be calculated in the 12 years securing the tenant against summary ejectment.

12. *Rule III.*—This rule determines the condition on which a ryot is to be restored to possession.

13. He will not be restored if his occupancy has lasted less than one whole year.

14. He will not be restored if he was ousted at the close of the agricultural year, and is also proved to be of less than 12 years' standing, and not to have any continuing right, by lease or otherwise.

15. He will not be restored if he was ousted at the close of a terminable lease, there not being proved any prescriptive right of occupancy independent of such lease (see close of paragraph 8).

16. He may or may not be restored, according to the discretion of the Court, even within the term of a lease, if he have violated or attempted to violate established usage or the conditions of the lease, as by building on the land, planting trees, &c. It will be competent to the Collector either to eject the cultivator for such acts or to restrain him from their performance, as the condition of his renewed possession. But ordinarily a cultivator will not be restored to possession if he be found to have violated, or not to have fulfilled, any material stipulations of his lease or tenure.

17. The cultivator (being of more than one year's standing) will be restored to possession in every case in which dispossession was caused against his will otherwise than at the close of the agricultural year.

18. The cultivator will be restored to possession whenever he is found to have been (otherwise than by terminable lease) in occupancy of the lands, either personally or by descent, for a period not less than 12 years and not to have justly forfeited his tenure under circumstances above referred to in paragraph 16, or where he is held (subject to the like rule of forfeiture) to own such a right in the land as has been described in paragraph 9.

19. In case of sub-leases granted by tenants, the sub-tenancy will, as respects the zemindar, stand or fall with the tenure of the tenant who created it. As against the superior tenant, the sub-tenure, it is apprehended, will be ordinarily found to be on an avowedly temporary footing. But each case will be judged by its own merits, and if anywhere, rights of sub-tenancy should be discovered of a more fixed character, they will be maintained by the Summary Court, in conformity with the general principles explained in this circular.

20. *Rule IV.*—Requires no comment.

21. Suits under this circular will be tried in every respect similarly to those at present heard for ouster and exaction. They will be entered in the Summary Suit Statement under the head of "Ouster"; but in the annual administration reports, a statement will be given distinguishing the number of suits brought by the zemindar against the ryot, from those brought by the ryot against the zemindar.

22. Although the rights of permanent cultivators are, in the notification of Government and in the present circular, spoken of as implying solely a

fixed and heritable possession, it is not to be inferred that cultivators can possess no other rights. The power of transferring his holding to another occupant (the original cultivator remaining responsible to the landlord) has been long admitted by the Government. The practice of permitting the cultivator to mortgage his fields is reported to exist in various parts of the country; and wherever transfers of rights of occupancy, subject to the regular payment of rent to the proprietor, are acknowledged in the practice of the people, they must be recognized by the Government and its officers.

Circular Order by the Board of Revenue, North-Western Provinces, (No. 17 dated the 26th September 1856)

23. The Regulations nowhere define the rights of cultivators. They lay down rules for the treatment of certain classes not holding transferable right, but they do not pronounce that there are no classes of cultivators possessed of, or capable of acquiring, a transferable right.

24. It is to be understood that the Government is not opposed to the growth, in the free course of private transactions, of a transferable cultivating title; and no impediment should be thrown in the way of the admission by the zemindars of such title, or of its tacit creation, according to the wishes and interests of the parties concerned.

25. Finally, it is to be observed that the rules and procedure relative to ejectment and recovery of possession, as now prescribed, do not in any way affect the question of the proper rate of rent to which a cultivator, exercising a permanent right of occupancy, may be justly liable.

No. 128, the dated 15th January 1859.

From—A. R. YOUNG, Esq., *Secretary to the Government of Bengal,*
To—E. CURRIE, Esq., *Member of the Legislative Council for Bengal.*

Letter from Mr. A. R. Young, Secretary to the Government of Bengal (No. 128, dated the 15th January 1859).

IN continuation of my letter No. 2599, dated the 27th November last, I am directed to forward for your consideration, the papers as per accompanying list, on the subject of the Bill to "amend the Law relating to the recovery of Rent in the Presidency of Fort William."

2. The return of the enclosures is requested, when no longer required.

No. 417, dated Fort William, the 1st December 1858.

From—E. T. TREVOR, Esq., *Secretary to the Board of Revenue, Lower Provinces,*
To—The Secretary to the Government of Bengal.

Letter from Mr. E. T. Trevor, Secretary to the Board of Revenue, Lower Provinces (No. 417, dated the 1st December 1858.)

From Junior Secretary to Government, dated 20th April 1857, No. 1643.
" " " to " " 10th October, No. 467.
" " " to " " 22nd December, No. 483.
" " " to " " 24th March last, No. 620.
" Secretary to Government, dated 8th June, No. 1333.
" " " " 3rd July, No. 1495.
To " " " 7th idem, No. 233
From " " " 22nd September, No. 2070.

WITH reference to the correspondence noted in the margin, I am directed by the Board of Revenue to submit, for the consideration of the Lieutenant-Governor, the accompanying notes upon the proposed new Rent Bill.

2. The reports of the several Commissioners and Collectors * are submitted in original.

Notes of the Board of Revenue, Lower Provinces, upon the proposed Rent Bill.

Notes of the Board of Revenue, Lower Provinces, on the proposed Bill.

SECTION II.—The principle here laid down appears to the Board to be quite free from objection. They suggest that, in addition to the particulars given in the proposed Act, the quantity of land leased out should be mentioned in the pottah, and they would incorporate with this section, section VI regarding the kabooliut or counterpart of the pottah.

SECTION III.—To the first four lines of this section the Board have no objection to offer. But they object decidedly to any attempt on the part of Government to interfere with the market price of land and to compel the zemindar to grant pottahs at the pergunnah rate. In practice, perhaps, in the greater portion of Bengal this section would be a dead letter, as there is no such thing as a generally recognised pergunnah rate. But the Board are of opinion that the proposed interference is very objectionable, and they recommend the cancellation of the section from line 5 *ad finem*.

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* It has not been thought necessary to print the separate Reports of the Collectors, which are very voluminous.

Notes by the Board of Revenue, Lower Provinces, on the proposed Rent Bill.

SECTION IV.—They would add this section on to the fourth line of section III as amended by them.

SECTION V.—The Board see no reason why occupancy without a pottah for three years should turn a tenant-at-will into one having the right of occupancy, and they would omit from line 15 *ad finem*.

SECTION VI.—*Vide* remarks on section II above.

SECTION VII.—The Board think that it would be preferable to allow an under-tenant who has been subjected to exaction, to recover in certain cases more than double the amount exacted or paid, and they would say "not less than double nor more than five times the amount exacted or paid."

SECTION VIII.—The Board heartily approve of the abolition of the power of the zemindars to compel the presence of their under-tenants for the settlement of their rents. They consider this power to be a fruitful source of oppression, and its existence to be quite unnecessary for the protection of the zemindars. The Board would transfer to section XX the last period of this section, as it appears to them to be misplaced as it stands at present.

SECTION IX.—The Board think that the amount to be recovered in cases of extortion should not be limited to three times the amount, but should be unrestricted.

SECTION X.—The application for enhancement should be made before the commencement of the Bengali year in which the enhancement is to take effect. When the rains set in early out to the eastward, the ryots frequently have made their arrangements for the current year by the middle of May, or the commencement of the month of Jait.

The cost of serving the application should be borne by the party making the application to the Collector.

SECTION XI.—The latter period of this section should be omitted. See remarks on section III above.

SECTION XII.—Notice should be given of the ryot's intention to abandon his land before the commencement of the year in which he intends doing so. The application mentioned in the last period of this section should be upon plain paper, and the expense of serving the notice, under the circumstances there contemplated, should be borne by the party entitled to the rent.

SECTION XIII.—No remarks.

SECTIONS XIV, XV, and XVI.—There is one point which, in the opinion of the Board, should be distinctly mentioned. If a farmer or other lease-holder holds on after a decree when the landlord wishes to oust him, the Criminal Courts should uphold the farmer in the just exercise of his rights. At present the Board understand that the Criminal authorities, in cases under Act IV of 1810, look merely to the fact of possession, without reference to the circumstance whether such possession is rightful or not, and also without reference to the power of the landlord to oust the tenant and make other arrangements. The Board are certainly of opinion that every protection is, by section X of Act IV, intended to be given to the landholder in the just exercise of his rights, and the Court of Nizamut Adawlut, by their circular order No. 54, dated 10th June 1840, appear to have fully recognised the principle. But the circular order in question has been rescinded by a subsequent one (No. 2, dated 19th April 1850), and the Board are apprehensive lest the Criminal authorities, bound as they are to respect the dicta of the highest Criminal Court in the mofussil, should, upon the strength of the rescission of the circular order in 1840, uphold the tenant against the zemindar, unless some special proviso be introduced into the new law.

SECTION XVII.—The Board would omit from clause 3 the words respecting the entertainment of claims to remission of rent on account of diluvium or other cause. Such might better be entertained when urged by a defendant in a suit for arrears of rent as a ground of abatement.

SECTION XVIII.—No remarks further than that the Board are decidedly of opinion that the power to sue an agent summarily for money or for accounts, is one quite necessary to check the malpractices of these parties.

SECTION XIX.—The remarks on sections XIV, XV and XVI apply equally here.

SECTION XX.—The Board would insert at the commencement of this section the words they proposed to omit from section VIII. They consider that some greater protection is required against vexatious measurement upon the part

of the zemindar. Under the law he might measure any ryot's land every year. The Board think that such conduct should render the person guilty of it liable to a fine.

Some provision also is necessary in case a ryot, after the Collector's injunction to attend the measurement, persists in his refusal, In such a case measurement in his absence should be permitted, and he should not be allowed to impugn its correctness afterwards.

SECTION XXI.—The provisions of this section are, in the Board's opinion, quite proper.

SECTION XXII.—To prevent the possibility of any mistake, the Board would recommend that a declaration be added to this section, to the effect that the time a case is pending, which is struck off in default or non-suited, will not be deducted from the period within which a suit must be brought under this Act. The Court of Sudder Dewany Adawlut have ruled this in the case of suits under Act XIII of 1848, and it is equally applicable to suits under this Act.

SECTION XXIII.—The Board would omit the last period of this section, as the pergunnah rate alluded to in section III is, in the Board's opinion, not generally prevalent, and even if it were so, should not form the standard by which to test the arrangements of the landlords and their tenantry.

SECTIONS XXIV, XXV and XXVI the Board approve.

SECTION XXVII.—The Board would omit the portion of the first sentence of this section from the words "but if" in the fourth line to the end. They do not approve of the principle of allowing Collectors to admit parties to file their claims on plain paper, especially as now a stamp of 8 annas is sufficient for any amount. With the claim must be presented a duplicate to be prepared by the plaintiff and to be served upon the defendant as directed in section XXXVII of the Act.

SECTION XXVIII.—No remarks.

SECTION XXIX. The Board would omit the last sentence of this section. In the first place they object to the principle of laying down in the law what particular evidence should be adduced by any party. This should be left to their option. In many cases, moreover, any reference to the jumma-wasil-bakee papers will be unnecessary; in fact, they will be no evidence whatever of the point at issue. If the defendant, for instance, allows the amount of jumma, but pleads payment in full, or that he has resigned his lease, or that the term has expired, in none of these cases will the jumma-wasil-bakee papers of the preceding year tend at all to rebut this statement. It must not be forgotten, moreover, that these papers are as easily fabricated as any others.

SECTION XXX.—No remarks.

SECTION XXXI.—The Board would abolish arrest upon mesne process entirely. There will, they observe, be always *primâ facie* evidence that the claim is true, but it is difficult to say what constitutes *primâ facie* evidence that, on the issue merely of a summons, the defendant will abscond. Some officers may consider the plaintiff's statement alone sufficient ground for the issue of a warrant, and the Board are of opinion that the power of granting a warrant will degenerate into the same general practice as now exists, and warrants will be the rule, summonses the exception. They therefore would not allow of the issue of warrants.

SECTION XXXII.—Supposing, however, that the power be retained, the Board would omit the three last lines of this section. They would not allow the Nazir's peon to receive the sum due, but the defendant should be brought in all cases to the Collector's Court immediately. In the Statement of Objects and Reasons it is mentioned that, in the opinion of the Member who brings in the Bill, the establishment of jurisdictions of limited extent is indispensable to the successful working of the proposed measure. It is not therefore probable that the Court of the officer issuing the warrant will be far from defendant's house. However that may be, the Board consider any inconvenience he may be put to on this score preferable to allowing payment to the *piada*. Neither would they allow payment to the plaintiff after issue of warrant, except in Court. Under this pretext the peons will continually be taking the defendants to the zemindar's cutcherries, where they will be exposed to all sorts of ill-treatment.

Notes by the Board of Revenue, Lower Provinces, on the proposed Rent Bill.

SECTION XXXIII.—There seems to the Board to be no sufficient reason for taking security for the defendant's appearance, until the satisfaction of the final decree. They consider that the present security is sufficient, namely, "for personal attendance during the prescribed summary enquiry." The late Board were of opinion that in the event of the non-appearance of the defendant the security became responsible for the amount of the decree. In this opinion the present Board do not coincide. The "hazir zamin" still remains "hazir zamin." The difficulty, moreover, is occasioned in a great degree, if not entirely, by the deciding officers. These should insist upon the attendance of the defendant when the final order is passed; then if a decree be given against him, he can at once be sent to jail in default of immediate liquidation, whereas now the final order is passed when the defendant's mukhtar only is present; and thus the execution of every decree becomes subsequently necessary; whereas if the course recommended by the Board were invariably followed, in many fewer cases would it be necessary to take out execution, and the decree will have been executed at the moment of its passing, either by the payment of the debt or the incarceration of the debtor.

Vide clause 2, section XVI, Regulation XIX of 1817.

As is contemplated in section LXX of the law.

SECTIONS XXXIV and XXXV call for no remarks.

SECTION XXXVI.—In lines 5, 6 and 7 of this section, instead of the words "that the defendant may be, or be supposed to be, at the time," the Board would alter the words "that the defendant's dwelling or usual place of abode may be or may be supposed to be at the time."

SECTION XXXVII.—The copy to be sent to the defendant will be the duplicate prepared by the plaintiff.

SECTION XXXVIII.—No remarks.

SECTION XXXIX.—After the words "by Dâk" in line 5, add the words "at the expense of plaintiff."

SECTION XL.—After the words "the warrant" in line 4, add the words "and other expenses."

SECTION XLI.—No remarks.

SECTION XLII.—This section may, the Board think, be with advantage incorporated into section XLI. After the words "agent" in the 22nd line, add the words "and any witness or witnesses brought forward by either party."

SECTION XLIII.—In the 8th line, for the word "or" the Board would read "and."

SECTIONS XLIV to XLVIII.—No remarks.

SECTION XLIX.—The Board approve of the provision that the fees of the agent are not to swell the costs. They observe that the law contemplates the employment of two agents, the one to speak to the facts of the case, the other to conduct the case. This appears quite necessary, as a man who can do the former may not be able to cross-examine witnesses, &c., in the Court.

SECTIONS L and LI.—No remarks.

SECTION LII.—The Board object to the provision that the Collector may employ any officer not officially subordinate to him in making local enquiries. Such an employé would certainly not care about making a correct report.

SECTION LIII.—Add to this section at the end the words "in this Act."

SECTIONS LIV to LVII.— No remarks.

SECTION LVIII.—The Board approve of this section, which appears to them calculated to give protection against collusive decree.

SECTIONS LIX and LX.—No remarks.

SECTION LXI.—The Board not believing, as above stated, in the general existence of a pergunnah rate, would omit this section altogether. They do not, under any circumstances, think that the Collector should decide upon the length of any lease, when there is a dispute between the lessor and the lessee.

SECTION LXII.—This section the Board approve. The question of possession alone must be put in issue; but that must include rightful possession, and if a third party plead his power to oust, the point must be investigated.

SECTIONS LXIII and LXIV.—No remarks.

SECTIONS LXV and LXVI.—The Board recommend that the provisions of these two sections should be assimilated, and that a copy of the decree should be given in the case of the pottah as well as in that of the kabooliut.

SECTION LXVII.—Opposition to the Collector's Nazir when giving possession after a decree should, in the Board s opinion, be treated as a contempt and punished as such. The marginal note "punishment for obstructing execution" would seem to show that such had been intended; but the intention has not been carried out in the text.

SECTION LXVIII.—An ishtehar should also be affixed on the land.

SECTION LXIX.— Approved.

SECTION LXX.—The Board approve of the principle of this section. It will be necessary to have a form of security bond drawn up providing for the responsibility of the bail, if the bailee be not present, when the final order is pronounced. If the bail produce him, then, and before if necessary, and when called upon, he should be absolved from further responsibility. If he cannot produce him at the time when judgment is pronounced, the decree should be against both, and be executed as proposed in the law.

SECTIONS LXXI and LXXII.—Approved.

SECTION LXXIII.—The warrant should be returned at the end of sixty days if not executed wholly.

SECTIONS LXXIV to LXXVII.—No remarks.

SECTION LXXVIII.—The only modification the Board have to propose is, that the Nazir's peon should not be empowered to receive the money in every case; the party arrested should be brought before the officer issuing the warrant.

SECTIONS LXXIX to LXXXI.—No remarks.

SECTION LXXXII.—The Board would not add the amount of the diet money to the costs of suit. The decree-holder should pay it.

SECTIONS LXXXIII and LXXXIV.—No remarks.

SECTION LXXXV.—The petition of claim should be upon stamped paper as a check upon collusion.

SECTION LXXXVI.—No remarks.

SECTION LXXXVII.—If the claimant make good his claim, costs should be awarded to him against the judgment-creditor.

SECTION LXXXVIII.—The Board infer that the words at the end of this section, from "provided that" to the end, are intended as a protection to the officers of Government who conduct the sale. If this be so, a similar provision should be introduced in the event of the order being for the release of the property, and the creditor should be enjoined to sue the claimant olny.

SECTION LXXXIX.—No remarks.

SECTION XC.—If sales of under-tenures for arrears are to be allowed at stated periods within the year, the Board think it would be expedient not to allow any execution against other property until the tenure upon which the arrear had accrued has been sold, and the proceeds found insufficient to meet the amount of the decree. This of course will seldom if ever be the case. It must be remembered also that no transfer by private sale can relieve the tenure from the liability of the rent.

SECTION XCI.—The Board would prefer that security should not be given by the claimant, but that he should always lodge the amount of the arrear decreed. Whatever then the result of the claim case may be, no further execution can be necessary. The money will in the event of success be paid over to the claimant, in the event of failure to the judgment-creditor. Provision should also be made regarding the common practice of the transfer of under-tenures by private sale without notice to the zemindar and registry in his sherishteh. Of course, until such notice and such registry, the former tenant is the party to whom the zemindar looks for his rent, if, then, in a claim case a new unregistered purchaser should appear and prove possession, the amount lodged should be paid to the judgment-creditor and all costs of the claim case borne by the claimant.

SECTION XCII.—No remarks.

SECTIONS XCIII to XCVI.—The Board approve of the provisions of these sections.

SECTION XCVII.—The Board would insert the words "gathered or ungathered" after the word "land" in line 15.

SECTION XCVIII.—The Board would omit this section as unnecessary. Cultivators hardly ever give security for their rents.

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SECTION XCIX.—Of this section the Board entirely approve.

SECTION C.—Of this also. The last sentence appears to them well calculated to make the zemindars careful in their selection of agents and managers.

SECTION CI.—The Board consider that some addition is necessary with regard to those kinds of crops which when ripe must be used or will spoil: fruit and vegetables for instance. Will many of them not bear keeping? Again, if the ryot be allowed to reap the attached crop and store it in his own granary under, moreover, his own sole custody, the Board apprehend that little will be forthcoming on the day of sale. They would, however, prefer that the ryot should reap it rather than the zemindars, although there certainly is a difficulty in the matter.

SECTION CII.—No remarks.

SECTION CIII.—The words at the end of this section enacting that the distrained crop shall remain in the charge of some person appointed by the distrainer for the purpose, appear to the Board to be scarcely consistent with the permission given in section CI to the distrainee to reap and store his own crop, although it be under attachment.

SECTION CIV.—If the words recommended in the remarks on section XCVII to be inserted are so, then the word "aforesaid" in the 8th and 15th line of this section may stand. If not the word "gathered" should be substituted for it, as "aforesaid" includes standing crops, and these cannot be the subject of this section.

SECTIONS CV and CVIII.—No remarks.

SECTION CIX.—No crop can be sold within twenty-one days from the date of distraint. The produce of orchards and gardens will spoil in this time generally.

SECTIONS CX to CXI.—No remarks.

SECTION CXII.—There is nothing said about the distrainer not complying with the law and withdrawing the distress after security has been given by the distrainee. Some provision appears to the Board to be necessary, for now, when security is given under the provisions of Regulation I, 1812, the distrainer in many districts never thinks of withdrawing the distraint. The Board think the case should be decreed *ex parte* in plaintiff's favour, if with his defence the distrainer does not file a receipt for the distrained property.

SECTIONS CXIII to CXV.—No remarks.

SECTION CXVI.—The Board object strongly to give the officer conducting the sale the power of giving time for the payment of the amount bid at the sale. Ready money should be the rule without any exception and immediate payment, or in default, re-sale.

SECTION CXVII.—The Board are of opinion that the proposed deduction of ten per cent. from the proceeds of the sale is excessive, they would propose not more than five per cent. Interest should be allowed at twelve per cent. when not otherwise agreed upon.

SECTIONS CXVIII and CXIX.—No remarks.

SECTION CXX.—Ten per cent. in the 11th line should be reduced to not more than five. They would add in the 19th line after the word necessary, the following "or by a warrant under the hand of the Collector."

SECTION CXXI.—The word "revision" in this section appears to the Board to be of doubtful import. Does it authorize the controlling authorities to cancel a sale for informality or illegality?

SECTION CXXII.—After the word property, in the 9th line, the Board would insert the words "or of such portion of it as may be necessary to cover the amount of arrear."

SECTION CXXIII.—Under the second sentence of this section, if "any part of the demand is found due," a decree is to be given in favour of the defendant. In the last sentence if the distraint is adjudged to be vexatious or groundless, damages may be awarded against the distrainer. There appears here to be some inconsistency. In every case, indeed, where the point at issue is the amount due, a decree may be given for the distrainer, yet the distraint, although not actually groundless, may have been clearly vexatious. Suppose, for instance, a man distrains for ten rupees of rent, and only two rupees is proved due, the distraint is vexatious, though not groundless, and heavy damages should be given against him if the true debt was acknowledged and tendered at

Notes by the Board of Revenue Lower Provinces on the proposed Rent Bill

the time of distraint. Some provision should, they think, be introduced to meet cases of this nature.

SECTION CXXIV.—The Board do not see why, if the zemindar has allowed the crop to be cut and stored, the lien of the zemindar should have prior claim to that of a judgment-creditor of the Civil Court. The zemindar, they observe, has precedence over everybody over the growing crop. In fact, he alone can touch it for a debt, and if he allows it to be cut, they think that he should lose this precedence, and that his attachment should not prevail against a prior one by another judgment-creditor.

SECTION CXXV.—The Board do not see why it should be necessary that a suit should have been instituted to contest the demand, before the claim of a person can be heard, who contests the right to distrain—collusion may very probably have taken place between the distrainer and the distrainee. A summary enquiry should, they think, be allowed without reference to the circumstance of the institution of a suit to contest the demand.

SECTIONS CXXVI to CXXIX.—No remarks.

SECTION CXXX.—In line 7 for "shall" read "may." The word "sooner" in line 14 appears to be a mistake.

SECTIONS CXXXI to CXXXV.—No remarks.

SECTION CXXXVI.—The Board think that no officer should have the power to decide suits under this Act away from the sudder station (except he has gone specially to the place as provided for in section LII), if either party to the suit objects. The agents of zemindars for the most part have several clients and they cannot spare the time to attend the office in the mofussil on account of one.

SECTIONS CXXXVII to CXL.—No remarks.

SECTION CXLI.—The Board do not approve of the money limit in appeals. Most cases concern an amount under fifty rupees, especially where ryots are concerned. To abolish appeal in any case would therefore press hard upon the poorer classes.

SECTIONS CXLII and CXLIII are unnecessary if the above suggestion be adopted.

SECTION CXLIV.—The wording of this section in that case will require alteration. Reference must be made not to the finality of the order, but to the nature of the cases alluded to in section CXLI from line 10 *ad finem*.

SECTIONS CXLV to CL.—No remarks.

Letter from Mr W H Elliott, Commissioner of Burdwan (No 81, dated the 6th July 1858)

No. 81, dated Burdwan, the 6th July 1858.

From—W H. ELLIOTT, Esq., *Commissioner of Burdwan,*

To—*The Secretary to the Board of Revenue, Lower Provinces.*

IN reply to your letter of the 2nd ultimo, No. 12, I have the honour to submit the report required from me, and the reports of my subordinates below noted, regarding the proposed Bill for the recovery of rents published in the *Government Gazette* of the 25th November 1857.

SECTION I.—I should be glad on the enactment of any new law professing, as this does, to take up any given subject in its entirety, to have it always declared that *every* preceding enactment on that subject is repealed. Doubts on this subject may arise, and an Act or section intended to be repealed may be overlooked. I would in this Section make such a declaration, adding in the course of the new Act any provision which that declaration may render necessary.

SECTION II.—It is very generally suggested that a registration of pottahs and kabooliuts is desirable. A poor ryot would not be able to pay two rupees for the registry of a pottah in which his annual jumma may be very trifling, but the present Registrars would be quite unequal to the work, and I fear that, however desirable in *theory*, the scheme would *in practice* occasion endless annoyance.

SECTION III.—I think it most important that the pottah and kabooliut should invariably contain a very clear specification of the tenant's land. Many will be found merely to mention "about —— beegahs of land in the village of —— at an annual rental of rupees——" and a poor ryot is frequently made to

Letter from Mr. W. H. Elliott, Commissioner of Burdwan (No. 81, dated the 6th July 1858).

pay for "*other* land" declared to be in his possession, and so proved by witnesses when the fact of his having paid for what is named in his pottah cannot be denied.

SECTION VI.—It seems needful to specify *how* the tender of a pottah is to be made. A landholder will have no difficulty in bringing witnesses to prove that his gomashta or paik made such a tender, the disproof of which will be difficult, if not impossible.

After the words "liable to pay," I would insert "under section III of this Act."

SECTION VIII.—The Officiating Collector of Beerbhoom protests against the withdrawal of the zemindar's power to compel a ryot's attendance, as utterly ruinous to the landholder. I rejoice in it, and think it will be generally approved as a long-needed boon, and just delivery from fearful tyranny.

It will be well to insert some few words as to the standard, or pergunnah, or other *measure* to be used. The variation of nulls from six to eight feet in length is much to be regretted, and will, I hope, be remedied by the enforcement of one uniform standard, when our survey shall have been completed, and our knowledge of individual villages perfected, but it is perhaps too soon to do this now. This does not obviate the necessity of naming the measure to be used.

SECTION X.—I do not see why Jait, the second month of the year, is named in this section. It appears to me that the notice of enhanced rent to be paid in any given year, should be given before the commencement of that year, and I would name the last month of the preceding year, whether Bengali or Fusli or even the last month but one, both here and in section XII.

SECTION XII.—See remarks on section X about the month of Jait?

How is a tenant to apply to a Collector under this section, on plain paper or on stamp? Section XXVII provides that in *suits for arrears of rent* no stamp except one of eight annas on the initiatory petition shall be required, but it makes no provision for the other classes of cases mentioned here and in section XVII.

The ryot should also, I think, be told *how* to give notice to his landlord of his desire to resign his tenure.

SECTION XIV.—The wording of this section seems to me lamentably vague. I have read it many times and I understand it clearly to authorize a landholder to oust any ryot who owes him a pice of rent on the last day of any year. There is no saving-clause as to the necessity of first suing the ryot, and proving the debt; or of being content with the payment of the arrear, even with interest and costs, but it is distinctly ruled that, if an arrear of rent remain due on the last day of any year, the landlord may eject the debtor, without warning or a day's grace, and make a new arrangement.

I respectfully submit the necessity of revising this section.

SECTION XV.—This section also seems to me to bear very hardly upon a "farmer or other lease-holder" who may be in arrear without any fault of his own,—perhaps by misfortune, perhaps by reason of some dispute with the landowner, which he leaves it to a Court to settle,—yet, if "an arrear of rent shall be adjudged to be due," the landowner may cancel the lease. I submit the necessity of so far guarding the farmer as to say that, "when an arrear of rent shall be adjudged to be due, and the Collector or other officer shall think it necessary or proper for the interest of the land owner to authorise the cancelling of the lease, he may issue an order to that effect."

SECTION XVII.—After "refusal of receipts for rent paid" insert "or refusal of rents tendered" to guard against a not uncommon method of annoying a ryot.

SECTIONS XXII and XXIV.—If I rightly understand these two sections, the former provides that the various kinds of cases mentioned in section XVII and other parts of this Act, must be instituted within one year, excepting only suits for arrears of rent which may be instituted within three years, and suits for delivery of pottahs and kabooliuts which may be commenced at any time during tenancy.

But I am quite unable to see the reason of this distinction. If a distinction is to be made, I should have expected the shorter time to be granted for

arrears of rent, and the longer time for miscellaneous cases. The main argument for enabling Collectors to act as Civil Judges, by summarily adjudicating claims for arrears of rent, is the necessity of helping the landholder to realize *speedily and regularly* the rents he has to pay so speedily and regularly to the State.

Letter from Mr. W. H. Elliott, Commissioner of Burdwan (No. 81, dated the 6th July 1858.)

But if it be not needful for him, and if he do not elect to institute such a suit speedily, it is evident that he does not sue for that speedy realization which has been the professed object of past enactments regarding arrears of rent: and a crafty zemindar may purposely defer his complaint, and watch a time which he knows to be unfavourable to the individual defaulter, *for the purpose of ruining him by a heavy aggregated claim*, separate portions of which the ryot might have been able, each in their due season, to pay, but which he was not wise enough to force into his landlord's hands unasked.

I would advise the most positive restriction of the time allowed for the institution of *all cases* under this Act to one year, and of rent cases to such arrear as may "become due in the course of the current year, or immediately after the close of the preceding year," and that this Act shall not be applied to any arrear or other demand which may have been due more than one complete year before the filing of the plaint.

See clause 1, section II, Regulation II, 1805.

SECTION XXVI.—I think this section may well be amalgamated with section XXIX, to which might be added the clause—

In plaints under this Act other than those for arrears of rent, the same particulars as are above required in those cases, excepting only such as relate to the land and the amount of rent, shall be specified.

SECTION XXVII.—I agree with those Collectors who think that *no option* should be left as to the reception of plaints on plain paper. Petitions innumerable will be presented, and the Collector's time and patience wasted in rejecting frivolous excuses for escaping the stamp duty. If the arrear be adjudged due, the additional payment of eight annas will be a very small penalty for the defaulter for not paying at the proper time. If the claim be dismissed, the plaintiff may fairly be mulcted for instituting a claim which he cannot establish.

The last clause is not quite clear. "No stamp shall be required in respect of any petition connected with the suit——or————or for copies of any papers." Is the petition only exempted, or are the copies also exempted? I suppose both.

The fees for copying must be rigorously exacted, or the copies applied for will be so numerous that the work will be overwhelming.

SECTION XXVII provides that a copy of the claim shall be sent with the summons. This section should therefore provide that "every statement" of claim shall be written on paper bearing a stamp of the value of eight annas, and "shall be filed *with a duplicate on plain paper* to be used as directed in section XXXVII of this Act."

If this be not done, the additional labour imposed on the Collector's amlah will be very heavy indeed.

SECTION XXIX.—I should be glad to see it ruled that yet fuller particulars must be given in the statement of claim against a ryot, namely, the *extent and boundaries of the land* (see remarks on section LXVII), the name of the ryot's surety (if any), and the names of the plaintiff's witnesses. He cannot indeed foresee what frivolous excuses the defaulter may make, and if such be made, he should name additional witnesses to disprove them. But in my opinion every plaintiff should be able and required, when he files a petition, to name the witnesses who can prove the allegations made *in that petition.*

I agree with the Collector of Hooghly in the desire to see the requirement of section XII, Regulation IX, 1833, as to the filing of jumma-wasil-bakee papers in the Collectorates, *strictly enforced*, and request attention to the following extract from his letter:—

"I am quite sure that, whilst such an ordinance would prevent very much mischief and fraud, and, after two or three years, put a complete stop to extortion of rent, it would also raise the real value of estates, enable auction-bidders and private purchasers to know what they were buying, and in every way tend to prevent disputes leading to suits both civil and criminal, besides raising the status of ryots, who, feeling themselves quite secure, would, it may be hoped, improve their methods of cultivation, feeling that they would themselves reap the benefit of success."

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The plaintiff or his agent and his witness should be examined *on oath.*

SECTION XXXII.—Every defendant, when arrested, should be allowed twenty-four hours at his own house to enable him to arrange his own affairs, and, if possible, to settle the claim out of Court.

SECTION XXXIII.—To prevent disputes and ensure uniformity of practice, the *form* of security or hazir jamin should be appended to the Act.

SECTION XXXVII.—See my remarks on section XXVII, regarding the duplicate on plain paper of the statement of claim.

An addition is needed in this section, corresponding with the last clause of section X, to the effect that, if defendant have no such residence, the mode of service of the summons shall be by affixing it at the mal cutcherry, &c.

SECTION XXXIX.—The Officiating Collector of Burdwan suggests that, whenever a summons needs to be sent by dâk, the postage should be paid by plaintiff, not charged to the State on the public service.

SECTION XLVIII.—It is a common practice for parties to delay suits by engaging to bring up their own witnesses, *without the slightest intention of doing so*, and afterwards applying for issue of subpœna, which should be by this Act denied to them.

SECTION XLIX.—I cannot approve of the prohibition to charge agent's fees as part of the costs of suit. It will certainly diminish what ryots will have to pay when they are cast, perhaps justly cast, for wilful default. But it will bear very hardly on those poor ryots who may be obliged to make up for their own ignorance by employing mukhtars to *prosecute* for or defend them, and who will thus have to pay those mukhtars out of their own pockets.

SECTION L.—The habit of landholders to institute a claim for arrears of rent and, by trickery of all sorts, to keep the defendant utterly ignorant of their proceeding against him, is so notorious that I do not think the defaulter should be denied the aid of a mukhtar.

SECTION LII.—Provision seems to be here required for the realization of the expenses of the local enquiry indicated.

SECTION LXI.—I imagine it to be intended that pottahs shall be annulled by the sale of the estate for arrears of revenue. If so, this should be specified.

SECTION LXIII.—Add " with interest at — per cent."

SECTION LXVII.—Here is a case in which the specification of the extent and boundaries of the land, both in the plaint and in the decree, is *specially* needed. See my remarks on section XXIX. But even in claims for arrears of rent, I have seen cases where such specification was most desirable to prevent fraud. The defendant shows a receipt for rent which he says is all that he owes—when plaintiff retorts that, though he has indeed received *that* money, more is due for *some other* land.

The Officiating Collector of Midnapoor suggests that, in all cases of ejectment, some special provision will be required, where ryots have built dwelling-houses, &c., on the land.

SECTIONS LXXIII to LXXVII.—I shall be glad to see the summary nature of these suits very strictly attended to. I would insist on a decree-holder taking out execution within sixty days *at most* after date of signature—and I would not allow a second or any subsequent warrant, unless I shall see ample evidence of every exertion having been made to secure execution at the earliest possible period. After the first, any warrant *not taken out within a week* should be considered cancelled. It should not be applied for till it is wanted, and every endeavour should be used to make the proceedings of our Courts respected and effectual, and to prevent their being slighted or used as instruments of annoyance.

SECTION LXXVII.—I would limit the period allowed for execution to *one* year from date of signing of decree.

SECTION LXXXIV.—The Collector of Hooghly justly remarks that no provision is here made for remedy of removal of or appropriation of property taken in execution, and that under construction 958 only those custodians who of their own free will take charge of property, are answerable.

SECTION LXXXVII.—Justice seems to require that, if a claimant be obliged to pay costs when he fails to establish his right, his cost should be paid by the judgment-creditor when that right is established.

SECTION LXXXVIII.—The Hooghly Collector suggests, and I most earnestly support the recommendation, that Collectors be specially exempted from

liability to prosecution with regard to orders in any suits under this Act. Nothing can be more provoking and absurd than to name the Collector as a defendant in such cases, merely because he had the misfortune to adjudge between the original parties. It is not even insinuated that he is himself concerned, but in cases numberless, he and the Legal Remembrancer and the Commissioner, and the Government Vakeels and other subordinates, are obliged to waste their time in answering suits to decide the right and title to property attached and sold under the Collector's order.

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Were any sinister motive or act charged to the Collector, the case would be different, but the including of his name amongst the defendants in a dispute about three cottas of land worth five rupees, of which all he knows, is that in *the time of some one of his predecessors* in office it was sold in due course of law at the request of A. as the property of B., and is claimed by C., does appear to me ridiculous: and so it is proved to be by the result of these cases, in which, as a matter of simple justice, the decree always affects only the parties actually interested, and the Collector is admitted to have been named only *pro formâ* as a sacrifice to red tape.

SECTION XCIX.—I admire this section, and suggest that, to give it full scope, a multitude of Bengali notices must be diligently circulated in the mofussil.

SECTION C.—The Collector of Hooghly says that at the end of this section he would except a Collector from liability for the acts of the managers and surburakars under him, for it would be impossible for him to institute lengthened enquiries in each case, during which the crops might be removed and all hopes of realizing the rents vanish.

SECTION CI.—Some short term should be specified, say, five days, within which, if the cultivator do not, the distrainer may proceed to cut and store grain. But there is a manifest difficulty in fixing the term; because, if the distraint be delayed till the crop is quite ripe, the cultivator may cleverly remove it, while, if the distraint be made early, the crop may not be fit to cut within the time by law prescribed. Yet, if some term be not specified, will there not be frequent disputes and complaints to the Collector?

SECTION CIV.—I think that every distrainer should be bound to send a copy of his list of property distrained *on the same day* to the Daroga or Moonsiff, Deputy Collector, or Collector, *whichever may be nearest*, for record in the Collector's office. It is at present well known that, whenever it is desired to annoy a tenant, the distraint is not made and no notice is given till the very day of sale.

I agree with the Collector of Midnapoor in wishing to confine the power of distraint to the crops on the ground or in stock. I would regard the ryot's house as his castle, not to be entered by any distrainer, except under a distinct order of a competent Court. I believe it would rarely be entered, except with a desire to insult the defaulter or his family.

SECTION CXII.—Form of security bond should be annexed to the Act.

SECTION XVI.—The price of each lot should be paid "before sunset of the day of sale." No discretion should be left to the officer holding the sale.

SECTION XVII.—Ten per cent. on the proceeds of the sale should be transmitted through the nearest Daroga or Moonsiff to the Collector *within twenty-four hours* after the sale.

SECTION CXXIII.—The Officiating Collector of Beerbhoom observes that the property distrained is too frequently utterly disproportioned to the amount of the arrears, and he would here rule that "if the demand or the *greater* part thereof be found due," &c., and would compel the observance of a due proportion between the amount of the arrear and the value of the property distrained.

SECTION CXXIV.—Some provision seems to be required for those cases in which both plaintiff and defendant are fictitious—the suit being a conspiracy to defraud a third party—the defendant admitting the property distrained by plaintiff to be his. Every officer who conducts a sale should be enjoined to make sure that the property distrained belongs to the defaulter named—not to another party—and some severe penalty should be prescribed for such fraud as I have indicated.

SECTION CXXXII.—I consider "the village chowkidar or local police officer" generally a very ignorant low caste man on very low pay—an improper

Letter from Mr. W. H. Elliott, Commissioner of Burdwan (No. 81, dated the 6th July 1858)

person to attest *any* document. The gomashta and mundles of the village seem better fitted for such a duty.

SECTIONS CXXXIII and CXXXV.—I think all reference to the "Penal Code," which is at present a nonentity, should be omitted.

SECTION CXXXVII.—I lament the enactment that *any person* may practise as an agent or mukhtar. The extraordinary stupidity and ignorance and villany of some of the mukhtars is alike painful to the presiding officer, derogatory to the dignity of our Courts, and injurious to the parties who trust them. I would confine the practice to the passed Vakeels of the Civil Courts, and to such respectable mukhtars as the Collector may admit after careful selection.

The Sudder Nizamut circular of the 20th February 1857, No. 3, authorising Magistrates to weed their Courts of useless mukhtars, I consider a *great boon*.

I would authorise a Collector to take up fraud or other misconduct of a mukhtar *on his own motion*, without requiring a charge to be made against him.

SECTIONS CXXXIX and CXLI.—A Collector's order in a suit for rent, &c., under fifty rupees is final; above that limit an appeal to the District Judge is allowed, but a decree of ten rupees against a ryot may be more ruinous to him than a decree of one thousand against his landlord. I do not see any great reason for allowing appeals from *intermediate* orders of a Collector in pending cases to the Commissioner.

Letter from Mr. G U. Yule, Commissioner of Bhaugulpore, (No 26, dated the 20th July 1858.)

No. 26, dated 20th July 1858.

From—G. U. YULE, Esq., *Commissioner of the Bhaugulpore Division,*

To—*The Secretary to the Board of Revenue, Lower Provinces.*

I HAVE the honour to forward the reports, as per margin, called for in your letter No. 12 of the 2nd ultimo, relating to the Bill for the recovery of rent. Messieurs Ainslie's (A) and Alexander's (B) letters are deserving of attention, and all the reports would have been better had more time been allowed.

Monghyr Collector's letter No. 32 of the 19th June 1858.
A. Bhaugulpore Collector's letter No. 80 of the 29th June 1858.
B. Purneah Collector's letter No. 269 of the 23rd June 1858.
Kissengunge Dy. Collector's letter No. 14 of the 1st June 1858.
Mudehpoora Dy. Collector's letter No. 4 of the 6th July 1858.

2. Every important alteration of the old law proposed to be effected by the Bill seems to me an improvement, with one or two exceptions noted hereafter. The simplification and reduction into one Act of all the existing laws on the subject is in itself a great stride in the right path. The Bill, it is said, infringes on rights of property guaranteed by the perpetual settlement, but I cannot see how. The ryot's right to a pottah is congenital with the zemindar's perpetual tenure. The right of occupancy of resident ryots and cultivators, if not specially provided for from the first, has always, I believe, been understood to exist, and their rights are specially reserved in the Sale Laws since Regulation XI, 1822. The latter part of the fifth section of the Bill merely defines the period of occupancy which gives the right, and certainly not in a way prejudicial to the zemindars. With regard to the rates, if these could not be settled as expected in section LIX of Regulation VIII, 1793, the Dewanny Adawluts were authorised, by section VI, Regulation IV, 1794, to determine them according to the rates established in the pergunnah for lands of the same quality; and section V, Regulation XLIV, 1793, a regulation issued on the same day as, and with special reference to the perpetual settlement, expressly declares that on the sale of an estate for arrears the purchaser shall be at liberty to collect from the ryots whatever the former proprietor would have been entitled to demand according to the established usages and rates of the pergunnah or district. I cannot say what have hitherto been held to be pergunnah rates, those existing in the perpetual settlement and recorded with more or less accuracy in the Collectorates, or those existing at any subsequent period when the question was raised. However that may be, the point is now very clearly decided by section III of the Bill, in favour of the zemindar and against the cultivator, by the use of the words "for the time being"—a qualifying phrase which hitherto has not appeared in any Regulation on the subject.

3. The power of compelling attendance of their ryots and of distraining their personal property will be taken from the zemindars by the Bill, but these are

privileges granted by law not inherent in the right by which landed property is held. A law passed by one generation is surely not binding on its successors in perpetuity, but such alterations in the laws regarding the connection of zemindar and ryot as the Bill proposes, were expressly provided for in the 7th article of the perpetual settlement itself, section VIII, Regulation I, 1793, by which the Governor General in Council reserved the right of enacting such laws as he thought necessary for the welfare and protection of the ryots, "and no zemindars shall be entitled on this account to make any objection to the discharge of the fixed assessment." The bestowal of these two privileges on the zemindars can be defended, it seems to me, on the ground only of expediency, not of justice. Government might decree if it pleased that rentals heretofore fluctuating should in future be fixed, but it had no right to assign away at the same time the personal liberty of the ryots on the estates, nor was it just to make their personal property, on which no natural lien for rent existed, liable to distraint and sale without ascertaining in some way that rent was due.

4. The great cause, however, of the objection alluded to above is, I suspect, a misunderstanding of section III, under which, taken alone, all ryots seem entitled to pottahs in perpetuity at the rates prevalent at the dates of the pottahs. The restriction by section LXI of the periods of pottahs to such ryots to ten years, and the consequence of such restriction, namely, that every ten years at least rents may be raised to the rates then prevailing, are overlooked. Before I studied the Bill, I was staggered at the idea of three years' occupancy giving a title to a perpetual pottah at fixed rates, and I think if the restriction was brought close to the enunciation of the principle, and if, perhaps, its consequence were plainly stated, the objections to this important part of the Bill would soon cease.

5. It seems to me indeed that a re-arrangement of the sections, placing all those concerning one matter under one head with such references as might be necessary, would be a great benefit to all. This is certainly the first thing which many officers who had to work the Bill would do, but no one could do it so well as its framer.

6. All matters under the Bill are to be adjudicated on by the Revenue Officers with an appeal to the Judge in some cases. Considering the slowness of the Civil Courts, it would not do to entrust to them the working of a law which so deeply concerns the realisation of the Government revenue, and considering their vast capacity for wrong and oppression, it would not do to increase their power over the ryots to the degree by which it would be increased under the provisions of the Bill. I suspect this has a good deal to do with the dislike of zemindars to the Bill; they have on the whole had it pretty well their own way in the Civil Courts hitherto, where a sane ryot seldom will, and a poor ryot cannot, fight them. Under the Bill there will be no expensive stamp paper or vakeels, and no, it is to be hoped, confusion worse confounding circulars, constructions, &c.; the Judges will be for the most part Christian gentlemen. So that, considering also the probable effect of certain of the new provisions, suits will, it is reasonable to suppose, be very numerous indeed, and I suppose Government is prepared for this and determined to keep up two separate and expensive agencies for the performance of civil work: perhaps it is best to do so. When the Act is passed, the three departments—Civil, Revenue, and Criminal—will become of nearly equal importance, no one being able to do with officers of less ability than the others. What then is to become of the honest incompetents of the Civil Service?

7. I shall proceed to make a few remarks on some of the sections.

Section I.—Section X, Regulation V, 1812, is repealed with other sections of that Regulation; how then are auction-purchasers to proceed under section XXVI of Act I of 1845, which is not repealed? and, again, in what Courts are auction-purchasers to enforce their rights under that section, or ryots to contest them? In the Civil Courts, I presume. As auction-purchasers have more extensive powers by the section mentioned than are provided for in the Bill, would it not be as well to mention this point in order to prevent confusion?

8. Section IV.—I do not concur in the justice of the last clause of the exception "nor to land sublet, &c." A resident cultivator holding under a ryot having the right of occupancy ought to be entitled to the benefits of this law as much as his superior, subject of course to forfeiture on the latter's

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tenure being forfeited. This exception excludes from protection in their rights a considerable class of ryots in parts of Eastern Bengal more liable to oppression than ryots holding direct from the zemindar, for the more petty a Bengali's power, the more harassing and vexatious is the manner in which he exercises it, and the ryot of a ryot is a slave indeed.

9. SECTION VII.—I object to give the ryot double the amount exacted or paid: *1st*, it leads to suits on speculation; *2nd*, the punishment has an appearance of varying in intensity in proportion to the offence, whereas it does nothing of the kind; it might just as well be varied with reference to the number of witnesses by whom plaintiff proved his case; more violence may be used in the exaction of one rupee than of ten or a hundred, and more fraud and attempt at extortion in withholding a receipt for an anna than for a rupee. Damages should be left to be apportioned by the Court according to the injury plaintiff may have received in person and property; and, further, the Court trying the case should be authorised to fine and imprison the defendant, or to make over the record to the Magistrate for him to inflict a suitable punishment without extending the field for violence and perjury by taking evidence over again.

10. SECTION VIII.—On no principle of equity and justice is Government authorised to put the personal liberty of any of its subjects at the mercy of others, the sole foundation of whose claim to such power is the fact that at one or more periods during the year they are entitled to receive a certain sum from the parties thus placed at their disposal as often as they please. Thinking thus, I need not argue about the expediency or otherwise of this section. The withdrawal of the power, though it never ought to have been granted, may cause some difficulty here and there in badly-managed estates, where the ryots as a body are ready to fight the zemindar; generally, it will not, I think, be felt, for the simple reason that, as long as our Courts and Police are what they are, we cannot put an effectual stop to the old practice in estates where the zemindar has retained any power or influence at all.

11. I cannot understand why the clause containing deprivation of the power to compel attendance should be accompanied by one reserving the right to measure.

12. SECTION IX.—My objections to section VII apply very strongly here.

13. SECTION X.—I did not intend to remark on the reports of the Collectors, but I think it necessary to call attention to Mr. Alexander's (C) observation regarding the period of the Bengal year on or before which notice must be given. This section gives, I think, a necessary power to zemindars which they had not by law before, though Regulation V, 1812, section IX, has been used as if it applied to all zemindars and not to auction-purchasers only.

C. *Vide* para. 8 of his letter.

14. SECTION XII.—An excellent provision this, but there ought to be mentioned that the relinquishment must be of all the land in the tenure, whatever it may be, not of a portion only. A cultivating ryot generally has a fair share of good and bad land in his holding, often with an average rent for each bigha or an approximation to it, that is, the good lands assessed rather lightly, the bad rather heavily, and I have known, times without number, ryots, particularly those who held without a document, trying to relinquish their bad lands, retaining their good—a ruinous practice to the zemindars, if allowed.

15. I suspect most notices will be served through the Collector, who in some districts will require an army of peadahs about the month when the relinquishment should take place.

16. SECTION XIV.—Why not use the phraseology of the succeeding section *mutatis mutandis* in this one, and cut out section XVI altogether?

17. SECTION XXIV.—Suits for the recovery of arrears from cultivating ryots might be within one year, and against farmers, &c., not cultivating ryots, within three years. Every day's delay in suing a cultivating ryot is a greater disadvantage to him than it is an advantage to the zemindar. The wording of the last part of the section might perhaps be improved.

18. SECTION XXVIII.—I would make dismissal of the suits, not nonsuit or non-admission of document, the punishment for failing to file document (and jumma-wassil-bakee when required) at the time of presenting statement of claim.

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19. SECTION XXXI.—I protest against issuing warrant of arrest at first, the examination of a plaintiff and his agent's inspection of documents is but little guarantee against fraud; issue of summons first is not much more, but it is a little, and it gives time for defendant to have a chance of hearing what is going on. I would be inclined to do away with the arrest altogether, unless some means of preventing the enormous oppression to which the practice gives rise can be discovered. The mere extortion of money or compulsory agreement to something is no trifle, but worse things than these are done to men and to women.

20. SECTION XXXII.—The officer entrusted with the execution of the warrant, that is, a Collectorate peadah, one of a set of as great blackguards as exists in the country, ought on no account whatever, I think, to be permitted to receive any money.

21. SECTION XXXVII.—Too much writing, I think. Would not the insertion in the summons of plaintiff's name, amount of claim, and year for which preferred be sufficient?

22. SECTION LII.—The recorded results of the Collector's enquiry are to be considered evidence, not so those of enquiries held by any other parties. It would be better to allow all reports or enquiries to be evidence, the Collector giving such credence to each as he has grounds for thinking it deserves.

23. SECTION LV.—What is *proof* that the summons has been served, and the Nazir's return or a receipt purporting to be signed by three persons according to section CXXXII, or the statement on oath of the peadah who says he served the summons, or all three? The *bonâ fide* service of summons and proclamation is more difficult to ensure than can be easily imagined by those who have never had practical experience of the difficulty; everything is smooth and correct enough to those who think the Nazir and his peadahs are more likely to act in good faith and tell the truth than otherwise.

There ought to be a law rendering it compulsory on every person in a village, who can read and write, to give a receipt, written by his own hand, testifying to service of summons or proclamation, namely, on a neighbour in his village by order of a Court of any kind.

24. SECTION LVIII.—The limitation of fifteen days is too short, it should be for at least one month before execution of an *ex-parte* decree; and when execution is taken out and the defendant seized or his property attached, then only can we say that he now knows what has happened, and if he urges non-service of notice or proclamation, he ought to be allowed to prove his plea if he can. If he does, there should be no re-trial or terms as to costs, &c.; the fraud has been plaintiff's own, his decree should be declared null and avoid, he should not be allowed to sue in the same matter again, and he should be compelled to pay damages according to circumstances to the party whom he attempted to wrong; such damages not being less than the amount of the decree he had fraudulently obtained.

25. SECTION LXVIII.—The mere erection of a pole is not sufficient; a drum should be beaten during the process, and then proclamation made; and this should be done, not at *any* place within the farm, but at the farmer's cutcherry, and at the principal haut or hauts in the farm.

26. SECTION LXXVIII.—If the decree be for papers or accounts, of course it was given after due ascertainment of the point that defendant had such papers, &c., to produce. Why then should he be released after six months without production of the papers? This is simple encouragement to fraudulent servants if there is a limit to the imprisonment, and I do not see why there should be, as the prisoner can get himself released whenever he pleases; it ought not to be less than three years.

27. SECTION CXX.—I would propose to add the words *provided that does not exceed the demand*, after "on the estimated value of the distrained property."

28. SECTION CXXV.—I am somewhat afraid of this section, it opens a wide door to fraud. I do not see, however, how some provision of the kind can be avoided. I think it might be as well to leave it to the third party to have the question of possession put in issue or not, and if he declines to declare that his rights are in no ways affected by the issue of the suit in hand which concerns the sum of rent then claimed only, and affords no foundation for future claims.

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29. SECTION CXXX.—The right of appeal against a Collector's order under this section should be given, I think.

30. SECTION CXXXII.—When the process is served at the instance of the zemindar, he will get signatures enough to attest service whether *bonâ fide* performed or not; respectable people residing in the same neighbourhood will not sign to a fraudulent service of the zemindar or an honest one of a ryot: they have some honesty and much timidity.

31. SECTIONS CXXXIX and CXL.—I cannot understand the general rule in the first, that, except as hereinafter provided, all orders passed by a Collector under the Act shall be appealable to the Commissioners, and the apparent restriction in the last section of appeals to Commissioner lying only with regard to the offences mentioned in sections CXXXIII and CXXXV.

32. SECTIONS CXLIV and CXLV.—Is the Zilla Judge's order final?

33. The working of the distraint part of the Act will depend upon the Ameens or Sale Commissioners, and if these are to be Civil Court Sale Ameens, no improvement can be expected. Moonsiffs' Courts, Thanna Police, and Sale Ameens of sorts are the three main curses of the country under the head of Native Agency.

34. I presume before the Act comes into force the establishment of Collectors will be increased to the extent required by the very great access of business which will probably take place.

Letter from Mr. G. F. Cockburn, Commissioner, Cuttack Division, (No 140, dated the 3rd July 1858.)

No. 140, dated the 3rd July 1858.

From—G. F. COCKBURN, Esq., *Commissioner of the Cuttack Division,*

To—The Secretary to the Board of Revenue, Lower Provinces.

I HAVE the honour to submit my observations on the proposed Bill for the recovery of rents, agreeably to your letter No. 12, dated the 2nd ultimo, and to forward also those of T. B. Mactier, Esq., Officiating Collector of Pooree; the reports of the other Collectors have not come to hand yet, but are daily expected, and will be immediately submitted.

2. I have carefully perused and considered the various provisions of the Bill, in the general principles of which I concur, and the codification seems to be complete. The abolition of the powers now vested in zemindars to compel attendance, the cognizance of suits by the Revenue authorities, whose decisions are final in certain cases and liable to appeals to Judge in others, while the power to institute regular suits is done with, have all my hearty approval.

3. Section X.—It is so very desirable that pottahs and kabooliuts should be exchanged in every possible instance that compulsory measures should be provided for whenever they fairly can be, and therefore it seems advisable not to allow of any enhancement of rents at all in the manner stated in this section, when there are no such written engagements between the parties.

4. Applications for the issue of notices of enhancement should be on stamped paper, as in every other ordinary case, otherwise the Government revenue will be unnecessarily sacrificed, and the facility of obtaining the issue of such notices will of itself lead to a vast number of fictitious applications for the purpose of keeping obnoxious ryots *in terrorem*.

5. SECTION XX.—The Collector may enjoin or excuse the attendance of a ryot, but if the latter refuses or neglects to obey, the course to be adopted is not provided for.

6. SECTION XXIV.—The term within which a suit may be brought may safely be reduced from three to two years.

7. SECTION XXV.—The last part of this and of the previous one are not understood as they stand at present.

SECTION XLI.—In this section as in CXXXI reference is made to the Collector being authorised in certain cases to issue a summons free of cost, but no provision is made for his doing so; he has no available officers in his own establishment, and unless the peons employed be paid by Government, they will assuredly be guilty of malpractices for their support; the discretionary power may as well remain, though I believe it will seldom if ever be acted upon for the reasons stated.

9. SECTION LXXVI.—No process of execution on a judgment should issue at all against the person of an heir or other representative of a deceased party,

10. SECTION LXXVIII.—Three and six months are too limited periods, and would be better to make them not exceeding six and twelve respectively.

11. SECTION XCVII.—In Champarun and Tirhoot and other parts, saltpetre is reckoned "a produce of the land" and dealt with under the summary suit laws. It is desirable expressly to authorize this, as though the practice is as above, yet the correctness of it has always been doubtful.

Letter from Mr. G. F. Cockburn, Commissioner, Cuttack Division, (No. 140, dated the 3rd July 1858.)

12. SECTION CXXX.—The arrest should not be imperative "on complaint being made," for the complaint may be false; the words "*shall* cause the person accused to be arrested" should be "*may* cause," &c.

13. In addition to the penalties mentioned in section CXXX it seems advisable to note, as in section CXXVIII and others, that the offenders will be further liable to criminal punishment for any assault or other offence committed.

14. SECTION CXXXI.—It will be generally more convenient in this division to execute processes through the kanungos, respectable Revenue subordinates who are paid salaries by Government and locally situated in each pergunnah. The Collector and the public would usually have far more confidence in the execution of processes through them than through a mere peon or other subordinate of the Nazir's establishment. If the words "or by an officer of his establishment" refer to the Collector's establishment, no alteration is necessary, but it appears to refer to that of the Nazir, and in this case I would propose that after the word "Nazir" the following be added—"or other officer to whom addressed"—the words "or by an officer of his establishment" being omitted.

SECTION CXLI.—It seems preferable that the decisions should be final, not according to the amount claimed, but according to that decreed; that in fact no cases in which a decree does not exceed fifty rupees should be open to appeal or revision, excepting under the circumstances specified.

16. It seems desirable, with a view to promote uniformity and correctness of decision in the more doubtful cases, that Collectors should have the power to refer cases in which their decisions are otherwise final, for the consideration and orders of the Judge who may similarly send them up to the Sudder Dewanny. These references would be rare, and should only be permitted where the application of the law seems doubtful.

17. SECTION CXLV.—It is not clear whether this section refers to appeals to Judges only, or also to Commissioners; if to the former only, some notice as to the value of stamp paper for appeal and limitation of time should be stated.

18. SECTION CXLVI.—In place of the Board of Revenue having to decide the question of jurisdiction, it seems far more simple that the Commissioners should do so, subject to appeal to the Board, if thought necessary, which I do not consider it to be.

19. Beyond these few observations there is nothing further that appears to require remark.

No. 42, dated the 5th August 1858.

From—C. T. DAVIDSON, Esq., *Commissioner of Revenue, Dacca Division,*

To—*The Secretary to the Board of Revenue, Lower Provinces.*

Letter from Mr. C. T. Davidson, Commissioner of Revenue, Dacca Division, (No. 42, dated the 5th August 1858.)

I HAVE the honour to submit the following remarks on the proposed Bill for the recovery of rents published in the *Government Gazette* of the 25th November last.

SECTIONS II to VII appear to me to be unexceptionable.

SECTION VIII.—This section repeals that portion of clause 8, section XV, Regulation VII, 1799, which vests zemindars with the power of "compelling the attendance of their tenants for the adjustment of their rents or for any other just purpose," &c. The section in question is universally objected to by all zemindars with whom I have conversed on the subject of the Bill, but I am not prepared to support their objections. They seem to think that they cannot even send for a tenant, but the right of summoning a ryot to adjust his rents is not, I conceive, abrogated by this section.

SECTION X.—This section re-enacts section IX, Regulation V, 1812, and Act VIII of 1848, and is an improvement upon the old law, inasmuch as the transfer of the serving agency from the zemindar to the Collector is likely to ensure a *bonâ fide* service of notice.

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SECTION XI.—No remarks.

SECTION XII.—Unless it is intended to allow ryots and cultivators who may hold pottahs for a term, say, for instance, three years, to relinquish their holdings at pleasure, I would suggest the introduction of the words *from year to year* after the words "cultivated by him" in the third line of the section. I do not think that ryots who have engaged for a specific period should be allowed to relinquish the land whenever so inclined.

SECTIONS XIII to XVI.—No remarks.

SECTIONS XVII to XXV, defining the nature of suits to be tried under the Bill, and the time within which they must be instituted, are unobjectionable.

SECTIONS XXVI to LXIV, defining mode of instituting suit and procedure of Court after institution, appear to me to be excellent. I would only remark that the provisions contained in section XLI will, in such districts as Backergunge, render the prompt disposal of summary suits very difficult. And as regards section LXIII it may be questionable whether a habitual defaulter, who persistently withholds his rent until sued for it, should be protected against ejectment on paying the amount decreed, &c., into Court.

SECTIONS LXV to XCVI, containing provisions for the execution of decrees passed under the Act, are also excellent. The only provision in them to which exception might be taken is to be found in sections XC and XCIV, which declare immoveable property, *other* than the under-tenure upon which the arrear is due, liable to sale. The proceedings under the law are of a very summary nature, and execution of a decree once passed cannot be stayed.

SECTIONS XCVII to CXXIX relate to distraint and sale of distrained land, and contain admirable provisions for preventing the abuse now practised under the existing law. It would be advisable, I think, to limit the time to be allowed for the payment of the purchase-money in section CXVI by the officer holding the sale to some defined period, say, not exceeding three days, and the rate of interest to be allowed in the following section might be declared to be twelve per cent. when not otherwise agreed on.

The remaining sections of the Act appear to me to be unexceptionable.

The reports of the several Collectors are submitted herewith in original as directed, with the exception of that of the Collector of Sylhet, who has, I conclude, forwarded it to Mr. W. J. Allen, Member of the Board of Revenue.

Letter from Mr. E. A. Samuells, Commissioner, Patna Division, (No 1130, dated the 24th August 1858)

No. 1130, dated the 24th August 1858.

From— E. A. SAMUELLS, Esq., *Commissioner of the Patna Division,*

To—The Secretary to the Board of Revenue, Lower Provinces.

I HAVE the honour to acknowledge the receipt of the Board's letter No. 12 of the 2nd June last, calling for my opinion and those of the Collectors of this division on the Bill for the recovery of rents now before the Legislative Council, and in reply beg to submit the Collectors' replies in original, and to offer the following remarks on the different sections of the Bill which appear to me susceptible of improvement.

2. In the 6th line of the 2nd section, after the word "specifying" I would insert "the area and boundaries of the land which he rents," and after the word "delivered" at the end of the section, I would add "and the mode and place of delivery."

3. The first interpolation is necessary in order to protect the ryot against the fraudulent suits so common in Behar, in which he is sued for the rent of land which he never occupied, the frequent changes in the quantity of land cultivated by the ryot rendering this fraud more difficult of detection in Behar than elsewhere. In pottahs for lands held under a Butai or Bhowli tenure, it is impossible to specify any money rent. The section therefore provides that such pottahs shall state the proportion of produce which the ryot is to deliver, but it is evident that, unless the area is also given, this provision is useless. The same pottah or its counterpart may form the basis of a suit for five hundred rupees or for five rupees as the landlord pleases.

4. The second amendment which I propose has also regard to this class of cases. It is of the utmost importance to the ryot that it should be settled between his landlord and himself, before he commences his cultivation, how

the produce, in which they have a joint interest, is to be dealt with. Under one system (Agore Butai) the landlord employs men to watch his share of the crop when it approaches maturity, and when it is ready cuts and carries it himself. In a more common variety of the same tenure, the crop is cut and thrashed by the ryot under the superintendence of the zemindar's servants, and the produce divided on the threshing-floor, but it is also matter of arrangement between the parties in this case whether the landlord shall have the straw or only the grain, and whether it shall be delivered at the threshing-floor of the ryot's village or at some other place more convenient to the zemindar.

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5. In the Bhowli and Danabundi tenures, which in the districts of Shahabad and Behar are more common than any others, there is even more room for dispute. In 1849, and again, in consequence of a despatch from the Court of Directors, in 1851, these tenures formed the subject of a voluminous correspondence. I append three of the most interesting letters which were written on that occasion, in order that those Members of the Legislative Council who are not acquainted with the controversy may become acquainted with its bearings, and be made aware of the importance of the subject.* It will be seen from a perusal of these papers how very necessary it is that the contract between the landlord and his tenant in these Danabundi leases should be accurately defined. With this view, I would propose that, in addition to the amendment in section II, which I have suggested above, the following provisions should be adopted either in the form of a new section or as a pendant to section II. "If the tenure be of the kind termed Bhowli or Danabundi, or any similar tenure in which the ryot engages to pay the landlord the market value of a certain proportion of produce, the pottah shall also specify the market and the month of which the average rates are to govern the contract, and the date on which the rent shall be considered due."

* Regulation II, 1795, should also be consulted, as it contains a great deal of information on this subject.

6. I have consulted the most intelligent native officers here, both revenue and judicial, on the subject of these Bhowli tenures, and all agree that the chief source of the evils connected with them which now prevail, is to be found in the vagueness of the verbal contracts which take place, and the variety of interpretations to which they are liable. Besides suits for produce greatly in excess of the proportion agreed upon which are of daily occurrence, a very common form of oppression is to evade the receipt of the rent if tendered at the time of harvest when grain is cheap, and to bring an action for it at the market rate of the day some months afterwards when grain has risen in price. The clause which I suggest, together with some other provisions which I shall propose in a subsequent part of this letter, will, I believe, place these tenures on a satisfactory footing, and I trust therefore it will meet with support.

7. It may very probably be thought by those who have had no experience in this part of the country, that payment in kind, or the mixed payments which form the peculiarity of the Bhowli tenures, should be discouraged as much as possible, and should not be sanctioned by the Legislature; but this would be a very great error. A large portion of the land of this province is entirely dependent on rain for its fertility. In good seasons it yields heavy crops, in bad ones next to nothing, and bad or indifferent seasons are more common than good ones. The ryots having no capital, and being an improvident race, would be ruined by one or two bad seasons if they had to pay fixed money rents. Under a Bhowli or Butai system, on the contrary, where the rent is proportioned to the produce, they can always rub on, and if they have not much opportunity of making money they are tolerably secure from ruin. These tenures are therefore very popular, and when the landlord is a just man are perfectly satisfactory to all parties. Any attempt to abolish them would create great discontent. The only complaint is that, owing to the defects of the law, the ryot who holds under these tenures is now practically at the mercy of his landlord.

8. In the 13th line of the 3rd section after the word "description" I would insert "and with similar advantages," and after the word "adjacent" the following sentence—"due allowance, however, being made in all cases for improvements effected at the expense of the landlord by means of irrigation, improved means of communication, or otherwise." The justice of this, I think, will hardly be questioned. Land of a particular description in such and such a pergunnah is worth two rupees a bigha. A zemindar in that

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pergunnah lays out several thousand rupees in providing the means of irrigation for his estate, and connecting it by means of good roads with a navigable river or a desirable market. By this means he raises the value of his land to twenty rupees a bigha—not at all an uncommon case. But his land continues of the same quality and description with that of his neighbours whose ryots for want of roads have to carry their produce to market on their heads, or who have no access to a good market. His ryots therefore under this clause as it stands may compel him to surrender all the profits of his improvements to them. This would be both unjust to the individual landholder and prejudicial to the best interests of the country. I trust therefore the clause will be so modified as to secure to the landlord in all cases the full value of any improvements he may introduce.

9. In the fifth line of the 7th section it will probably be advisable to insert after the word "pottah" the words "or payable by him under the provisions of sections III and X," otherwise the benefits of this section will be confined to those who have obtained pottahs, and the landlord will have an additional inducement to refuse them.

10. I have no doubt the withdrawal of the power of compelling the attendance of their tenants will be severely felt by the landlords in some parts of the country where the holdings are small and the ryot can escape with the produce of his fields into a Foreign State before the zemindar can put the law in force against him, but the present system leads to such grave abuses that I cordially concur in the restrictions which are laid upon landlords by the 8th section of the Bill.

11. In the 10th line of section XVII the word "primarily" may be inserted before the word "cognizable." Several of the suits mentioned are cognizable in appeal by the Judge or the Commissioner.

12. To section XX I would add these words—"If the ryot, notwithstanding such order, shall continue to absent himself, he shall be precluded from afterwards disputing the correctness of the measurement." As the section stands, no penalty for his contumacy is provided.

13. Section XXI abrogates the right, rarely exercised as far as my experience goes, which proprietors and farmers at present enjoy under section X, Regulation XIX, 1793, of summarily ousting persons who hold rent-free tenures on their estates under grants made subsequent to the 1st December 1790, and compels them to institute a suit before the Collector for possession. This, I think, is a very proper amendment of the law, but it does not go far enough. The Sudder Court has on several occasions ruled that section X, Regulation XIX, 1793, applies not merely to cases in which parties hold under grants made subsequent to 1790, but to cases in which they are unable to prove that the land they occupy was held rent-free prior to that year, which it will readily be seen is a totally different matter. This interpretation may be productive of great injustice. Many lakheraj grants have probably passed through fifty hands since 1790. The registers in many districts are notoriously imperfect: owing to the frequency of fires, and the habits of the people, documents in this country are especially liable to be lost or destroyed. An indigo planter, we will suppose, wants a particular patch of lakheraj land. He finds that there is no grant in existence, but that for sixty years back the tenure has been recognised as a valid rent-free tenure by a succession of landlords, and has been purchased twenty years before at a *bonâ fide* decree sale by its present owner. He considers himself safe under these circumstances and purchases the land. The landlord's cause of action, if he has any, originated more than sixty years ago, but under this section of the Bill, interpreted as section X, Regulation XIX, 1793, has been by the Courts, the Collector may call upon him to prove rent-free possession prior to 1790, that is, sixty years ago, and oust him if he fails. It may be said that the law of limitation will prevent such cases; that as Government must sue in all lakheraj cases within sixty years from the date of their cause of action, so private individuals must ordinarily sue within twelve, and that in all cases a sixty years' title would give a prescriptive right which could not be assailed by any one. Thus it certainly ought to be, "*ut sit finis litium*" is an excellent maxim of law. But the final clause of the 21st section of the Bill runs directly counter to this maxim, and declares that, except in the case of those parties who can prove

rent-free titles of a date anterior to 1790, the litigation connected with these lakheraj holdings shall be never-ending. "Nothing contained in this Act relative to the limitation of suits," it is said, "shall be held applicable to such applications." That is, although I and my father and grandfather have for sixty years recognised the validity of your tenure in the hands of yourself and your ancestors, I may suddenly turn on you when I discover that accident has put it out of your power to carry your title beyond 1790, and oust you at a day's notice. This appears to me to be monstrous, and to be altogether opposed to the Indian law of limitation, which, like that of England, requires that, before the plaintiff can call on the defendant to establish his title, he must show that he himself has claimed redress within the period, dating from the cause of action, which the law allows him. I particularly wish to call the attention of the Mover of this Bill to the fact that the final clause of his 21st section creates a new law of limitation. Section X, Regulation XIX, 1793, contemplated no action at all, and does not contain a syllable with regard to the period during which the landlord may exercise his rights. It declares that no length of time shall give validity to a grant made subsequent to 1790, and so bars prescription on the part of the lakherajdar who holds under such a title, but the right of the lakherajdar to prescribe, and the right of the landlord to put the lakherajdar to proof of his title, or to oust him, are two totally different things. Before you enquire what the lakherajdar's title is, the law,* as I read it, declares that the landlord shall prove either that he has sued within twelve years from the date when his cause of action first arose, or that he comes within one of the exceptions which the law allows. Not only will the last clause of section XXI of the Bill modify this law in certain cases, but it will completely set aside the 3rd clause of section III, Regulation II, 1805, which declares that no original defect of title on the part of the possessor of property claimed after the lapse of sixty years shall be deemed a sufficient ground for taking judicial cognizance of any suit so preferred, and that although a fraudulent title may be assailed at any time during sixty years, yet twelve years' *bonâ fide* possession under a title, such as that of purchase, believed to be just and honest, shall bar a suit on the part of any one who does not sue within twelve years from the date of his cause of action. Under the 21st section of this Bill, a man may be ousted by a private purchaser of the zemindary five hundred years after he and those he represents have held the property rent-free under *bonâ fide* titles, merely because he cannot prove that it was rent-free prior to 1790.

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* Regulation III, 1794—Section XIV, Regulation II of 1805.

14. The law of limitation in lakheraj cases has been very much unsettled by the conflicting decisions of the Courts. Prior to 1855 it was generally held that the law of limitation did not apply to these suits. On the 10th September 1855† the question was argued before a Full Bench of five Judges in the Sudder Court, and it was to all appearance finally decided that suits by zemindars for the resumption of rent-free lands under one hundred bighas within their zemindaries were subject to the ordinary law of limitation. It was generally felt that this was a just and proper decision, not only because it was in strict accordance with the law, but because, from the length of time which had elapsed since 1793, there could be few *bonâ fide* claims to lakheraj land unadjusted, and the effect of placing these cases beyond the pale of the limitation law was simply to harass men who held lakheraj land under titles honestly derived by themselves or their predecessors. In the case of Degumber Mitter, however (22nd July 1856, a special appeal which had been admitted to try whether suits for enhancement of rent were subject to the law of limitation), an opinion was thrown out by the Judges that the law of limitation would not apply to cases in which the lakherajdar could not show that the land in dispute had been held rent-free prior to 1790. This again unsettled the question. In the case of Kenooram Roy, decided on the 22nd May 1857, a majority of the Court affirmed the dictum in the case of Degumber Mitter. In the case of Joy Kishen Mookerjea, again, a similar majority held that the dictum in the case of Degumber Mitter was a mere *obiter dictum* on a point which had not been argued or put in issue, and that the ruling in the original case of Gungadhur Banerjea must be followed. There has since, I believe, been another decision on the other side. It is obviously very desirable that this important point should be settled. Section XXVI of the Bill, which is to

† Case of Gungadhur Banerjea.

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replace section X, Regulation XIX, 1793, leaves the question in its present unsatisfactory state. I propose therefore that the last sentence of section XXI should be expunged and that the following should be substituted—"The provisions of the ordinary law of limitation current in the Civil Courts of the Bengal Presidency shall henceforth apply to these suits." No person can have been in possession of lakheraj land for more than twelve years without the assent of the zemindar or those he represents, excepting in the case of auction-purchasers who are not affected by laws of limitation. It is surely no peculiar injustice, then, to say that, as the zemindar has not chosen to exercise his rights within the period allowed by law, his remedy and that of his heirs and representatives should be barred. It would be so in the case of any other property, why not in this?

15. In the third line of section XXIV I would substitute *one year* for "three years." I know of no good reason for granting the longer period.

16. In the 16th line of the 29th section after the word "produce," I would insert "the kubooleut of the ryot or a copy of a decree under section LXVI of this Act." In the 20th line after the word "office" I would suggest, "in the case of Bhowlee tenures the plaintiff shall also produce the estimate and weighment accounts of the ryot signed by the ryot himself, the arbitrator, and other parties employed in the estimate of the crop or the weighment of the produce." In the same line for the word "this," should be substituted "these two," and in the 21st line "rules" for "rule." At the close of the section I would add the words "and kubooleut or decree."

17. I do not know why a kubooleut should be insisted on in distraint cases and omitted in summary suits. All the native officials to whom I have spoken on the subject are strongly in favour of compelling the plaintiff either to produce a kuboolcut or account satisfactorily for its absence. They are of opinion that an exchange of pottahs and kubooleuts would entail no hardship whatever on the zemindar, and that it affords the only efficient protection for the ryot. That is also my own opinion. We have had abundant experience of the provision which enables the ryot to sue his zemindar for a pottah, and we know that the privilege is nearly valueless. Men who are powerful enough to sue their zemindars for pottahs are not the people for whose protection this Bill is intended to provide. The want of a pottah is an uncertain evil. To incur the enmity of the Zemindar is a positive one. Ninety-nine ryots out of one hundred will choose the least evil of the two. Besides, why encourage litigation? You think it is right that there should be an interchange of pottahs and kubooleuts. Then why not take the simplest and most obvious method of securing this object by refusing to entertain any suit not founded on a kubooleut, or in which the absence of the kubooleut cannot be satisfactorily accounted for?

18. In Bhowlee cases all my informants here are agreed on the necessity of compelling the production of the Danabundee or estimate papers. In order to render this intelligible, it may be necessary to explain the process of a settlement of accounts under the bhowlee system. When the crop is ripe, the putwaree, the gomashta, the ameen, a jureeb kosh or measurer, a salis or arbitrator, a nava-sinda or writer, and the jet ryots of the village, with the ryot himself, proceed to the field in which the crop is growing. The salis first makes an estimate of the produce. The ameen then makes another. If the two estimates agree, the matter is considered settled. If they differ, the ryot cuts a cottah where the crop is thinnest, the zemindar's people cut another where it is heaviest. The produce is thrashed out, mixed together, and weighed, and the produce of the whole field is estimated from this sample. A memorandum of the result, called a Danabundee, is made out by the putwaree and his writer, and signed by those present. The ryot is then at liberty to cut and store his grain. The putwaree next prepares a paper called a "behree" showing the amount of grain in the possession of the ryot and the respective shares of the malik and the ryot, and sends for the malik's share which the ryot either pays in grain or money as may have been agreed upon. If the agreement is to pay in money, the gomashta writes to the amlah of the surrounding villages for the nirik or market rate which is returned on the back of his letter, and an average is then struck. It will thus be seen that the accounts of the estimate of the crop and its weighment form the chief evidence in these Bhowlee cases, and that a jumma-wassil account is of comparatively little use.

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19. I entirely approve of the restrictions which have been placed on the issue of warrants of arrest. It is a common practice here to issue warrants of arrest on false claims for arrears of revenue simply to harass the opponent or get him out of the way. I would add either to this or the 34th section the following provision in order effectually to put a stop to such disgraceful proceedings—"If it should be proved on the hearing of the suit that the arrest has been made on account of an arrear not due, or otherwise vexatiously and without due cause, the Collector shall dismiss the suit and shall award to the aggrieved party such damages, not exceeding three times the amount of the claim, as may appear to him just, and the amount shall be realised from the plaintiff, together with all costs of suit, by the ordinary process of distress and sale."

20. I note that section LXI may frequently give the ryots on temporarily settled estates an advantage over those on estates permanently settled. The Cuttack Settlement for instance and many others are for thirty years, whereas the term of a lease in a permanently settled estate is limited to ten years. It is not, however. a matter of much consequence.

21. I conculde that by section LXXXV it is intended that the third party shall appear in person. I think this is very proper, and merely notice it because the Collector of Tirhoot seems to think it doubtful.

22. It is intended by section XCIII to give sharers in joint undivided estates the powers of suing the ryots for their individual shares. If so, I cannot think that this would be a very objectionable power indeed, and would lead to a great deal of confusion and litigation. One hundred and fifty sharers in a single undivided village is by no means an unusual number in this division. Is each ryot to be liable to one hundred and fifty suits? and how is the Court to ascertain what the precise share of each shareholder is? In these confraternities that is generally matter of dispute, and the Collector will find that he has to decide the amount of the plaintiff's share in the estate before he can proceed with the suit for rent. By law, sharers in undivided estates are bound to appoint a manager, and the ryot should be liable, it seems to me, to the manager or the general confraternity alone, and should only be compelled to answer the suit of individual sharers when they sue in the name of the whole of the maliks and show good grounds for doing so.

23. To the 101st section I would add "provided that, in the case of sugarcane and other crops which are cut or gathered gradually or from time to time, the crop shall be distrained as it stands, and the distrainer shall not be entitled to cut it." Sugarcane, cotton, castor oil, and some other crops are cut or gathered gradually as a market is found for them or the manufacturer is ready to take them. If a whole field of sugarcane were cut at once it would be impossible in most parts of the country to find a market for it, and the ryot would be seriously injured.

24. In section CII, after the word "witnesses" I would insert "resident in the neighbourhood," otherwise witnesses will be kept by unscrupulous zemindars for the purpose of swearing to notices which have never been affixed.

25. In section CIII after the word "may" in the fourth line I would add "make application on plain paper to the nearest Sale Commissioner for the issue of a warrant of distress. The application shall be accompanied by the sum necessary to cover the expense of executing the warrant, and shall contain the particulars which by section CII the distrainer is required to insert in the notice, together with a declaration that, although the notice has been duly served on the defaulter or affixed to his house (as the case may be), the defaulter has failed to pay the amount of the demand. The Sale Commissioner shall swear the distrainer to the truth of this declaration, and shall then issue warrant of distress to a bailiff or other duly appointed officer of his establishment authorising him to." In the seventh line in place of the word "and" I would insert "the distrainer:" in the ninth line after the word "property" the words "countersigned by the bailiff or other officer."

26. In section CIV, line 3, I would omit the word "distrainers" and substitute "the Officers of the Sale Commissioner named in the warrant of distress," and would make the same alteration in the ninth line. In the fifth line after "building" I would insert "pointed out to him by the distrainer." At the close of the section I would add—"The distress, however, shall be made in the

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name and on the responsibility of the distrainer." Section CV I would omit altogether.

27. The object of these various alterations of course is to prevent any distraint from taking place except through the intervention of a public officer. Unless this is done, the present abuses will to a great extent continue to prevail. Zemindars in this country cannot safely be entrusted with the powers of entering and searching the houses of any of their tenantry against whom they choose to allege an arrear. Even if they could be trusted to use this power discreetly, their gomastahs and peadahs cannot.

28. No penalty appears to be provided in section CXVIII. I would add—"all such purchases shall be void. The Collector shall order the articles purchased or their value to be refunded, and the purchaser shall have no claim to the purchase-money he may have paid. The Collector may, if necessary, enforce his order by distress and sale."

29. In section CXIX, after the word "distrainers" in the sixth line, I would insert "or public officers employed in distraints or sales."

30. In section CXXXII, instead of "a village chowkeydar or local police" I would prefer "the mundul, jet ryot, or other head ryot of the village." The chowkeydar is generally the servant of the zemindar and under his influence, added to which he can rarely read or write.

31. The chapters of the Penal Code referred to in section CXXXIII and some other sections have not been sent, and I have no means therefore of knowing what the offences alluded to are.

32. With reference to section CXXXVIII, I observe that no authority is given by the Act to Assistants, and the power of vesting Assistants with special powers is withdrawn. I cannot but think this an unfortunate change. It deprives young Civilians of the judicial training they have hitherto enjoyed in the decision of revenue suits, and will often throw an immense amount of work on the Collectors' shoulders.

33. In the last line of section CXLIII I would insert the word "oral" before "evidence." If the decision is not to be reversed on the ground that it is unwarranted by the evidence, whether oral or documentary, it is hardly worth while giving an appeal at all. It will only lead to disappointment.

34. The provisions of the Bill on the subject of appeals are, I think, good. I am glad to see that we are likely to get rid of the old cumbrous system under which a landlord might drag his ryots through six different Courts, three revenue and three judicial.

35. Altogether this Bill will be a great boon to the agricultural population, and to those who are engaged in the trial of suits connected with the recovery of rent. I sincerely trust no time may be lost in passing it through the Legislative Council.

Letter from Mr. C. Steer, Commissioner of Revenue, 16th Division (No. 120, dated the 27th August 1858.)

No. 120, dated Chittagong, the 27th August 1858.

From—C. STEER, ESQ., *Commissioner of Revenue, 16th Division,*

To—*The Secretary to the Board of Revenue, Lower Provinces.*

I HAVE the honour to acknowledge the receipt of your letter No. 12 of the 2nd June last, received in my office on the 2nd instant, and in conformity with the order therein contained to submit in original the reports of the several Collectors subordinate to me upon the proposed Bill for the recovery of rents.

2. If this Bill becomes law, I do not see how it is possible for a zemindar ever to raise the rate of rents in his estate beyond the present pergunnah rate.

3. If a resident ryot has a right of occupancy so long as he pays the rent demandable, if he is entitled to demand a pottah, and that pottah he is entitled to claim at pergunnah rates, those rates, as they prevail at present, will be the rates always. I am altogether unable to see how, except in very few and exceptional cases, a zemindar can manage to raise his pergunnah rates.

4. To my mind the effect of the law will be that it will fix for ever at its present amount the rent-roll of every landholder. As the value of land has increased, and as, by the higher value of agricultural products now and hereafter likely to obtain, the value of land is likely still to increase, it is not fair to limit the zemindar's demands upon his tenants to the rates which prevailed when land was not worth half what it may hereafter become worth.

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5. Of course, if the principle of extending to the landlord any share in the growing prosperity of his estate is a bad one, then let the Bill pass; but if that is not the case, there should be some means provided for the regulation of the pergunnah rates from time to time. The Collectors might be empowered to do this, say every five years, subject to the approval of the Commissioner or to the decision of a civil suit, whenever such might be passed solely and wholly to try the question of rates.

6. There is no denying that, under the power possessed by landlords of compelling the attendance of their tenants, the greatest oppression has prevailed throughout the length and breadth of the land. But the authorities have been always severe in dealing with such cases when they have been brought to light, and my own belief is that there is not now anything like the tyranny exercised over the ryots by their landlords that there used to be. Our police is somewhat improved. More Courts for redress of grievances have been established; there is not that trouble and delay in obtaining justice which once prevailed; and the evil of abuse of power is likely to diminish still further as these causes of amelioration are still further extended. For any abuse of the power of a landlord he might then be well left to the penalty provided in section IX, and we may be sure that for every proved offence the Courts will not be slow to award the merited punishment. But if the provisions of Section VIII are allowed to be published, no zemindar will dare to ask for the attendance of his tenant at his cutcherry for any purpose whatsoever; and how often cases arise where the personal presence of the ryot will alone suffice to clear up some matter of doubt or difficulty, every one who has had the least experience in the management of estates can easily understand. If it rests with a ryot to attend or not as he likes, he never will attend at the call of his zemindar. I would therefore exclude section VIII from beginning to end.

7. Section XII.—The notice of relinquishment should be given not later than the end of Chete; it is too late to make arrangements with another party when the time for ploughing and sowing has come.

8. Section XXIX.—I would cut out the words "or tenure," and insist in every case on the production of the genuine jumma-wasil-bakee of the village. The account of the tenure would be one made for the occasion, and would be nothing worth as evidence.

9. Section XLV.—If an agent is unable to answer any material question, time should be given him to enable him to answer; it is hard to summon the zemindar in person in any such matter. A zemindar who has extensive estates in different zillahs might find he had nothing else to do but to go from zillah to zillah to attend on such summons.

10. Section XLIX.—If a ryot, by withholding his rent, obliges his zemindar to sue him, he should be charged something as a fee for the zemindar's agent. It is his fault that he is sued, and zemindars cannot prosecute every ryot in person, and must need employ agents.

11. Section CXXI.—Civil Court ameens are made subject to the orders of the Collectors in all their proceedings under the Act; but they should be rendered liable to punishment by the Collector for malpractices, and both offences and their punishment should be specified in the Act.

12. The proposal to do away entirely with appeals in suits below fifty rupees is, as far as I have learnt, universally disapproved of. Every case should be allowed to be heard once in appeal. Cases by the Deputy to be heard by the Collector, and cases by the Collector to be heard by the Judge. The Deputies should, as a rule, decide all cases in the first instance, and the Collector should generally confine himself to hearing appeals. If the effect of the law is to create a number of suits, there must be many more officers locally appointed to hear and try them. The Collector will not be equal to the decision of the appeals; and other officers must be specially empowered to assist him in this part of his duties. The law cannot work well unless we have as many Deputy Collectors as we have Moonsiffs, and unless the appeals are heard promptly.

13. In these remarks I have confined myself to the more important provisions of the law, looking more to the principles upon which it is based than to the details, and not thinking myself called upon to enter into any long discussions in elucidation of my opinions.

Letter from Mr. A. Grote, Commissioner of the Nuddea Division (No. 157 Ct., dated the 2nd October 1858)

No. 157Ct., dated Alipur, the 2nd October 1858.

From—A. GROTE, Esq., *Commissioner of the Nuddea Division,*

To—*The Secretary to the Board of Revenue, Lower Provinces.*

I HAVE now the honour to report on the Recovery of Rents Bill as required by the Board's letter No. 12, dated the 2nd June last. I have had the remarks and suggestions of the Collectors and Deputy Collectors entered in a statement in which I have noted briefly how far I concur with the latter.

2. This Bill, parts of which were last year shown to me by its framer, is perhaps the most important for the progress of this Province that has yet occupied the Legislature. Its effect, if it passes into law, which I sincerely hope it may, will undoubtedly be to raise the character generally of the rural population, and to restore to them the comparatively independent position which they held as "ryots" in the earlier days of our rule.

3. For the tendency of legislation from 1793 downwards has been, notwithstanding the acknowledgment of the duty of the ruling power contained in Article VII of Lord Cornwallis's proclamation, to strengthen the hands of those who were then made land-owners. The frequent transfers of estates by sale during the first twenty years which succeeded the decennial settlement, seemed to justify the impression that the revenue could not be paid in with the necessary punctuality, unless the largest powers for realizing their rents with equal promptitude were conferred on all land-owners. Large as these powers were, they were until within the last thirty years under the control of a Collector who legally or illegally gave redress where such powers were abused. The modern Collector has no room for action; his purwannahs to zemindars carry little weight with them; he can adjudicate summarily, but the limits within which he can do this and see to the execution of his decrees, have been narrowed nearly every year by some new ruling of the regular Courts or of the higher executive authorities. Any interference now on his part is an irregularity. He refers all parties to the Magistrate or to the Civil Court.

4. Under this Bill he will recover his importance, and be the arbiter of first instance in all disputes between those who may receive and those who must pay rents. His influence in the district will be largely increased, and, in my opinion, wisely so.

5. I now proceed to make a few comments on the new provisions of the Bill, and should like to have been able to give more time to their consideration; but in a heavy office like this it has been only by snatching an hour here and there that I have succeeded in complying with the Board's call of June last.

6. SECTIONS II TO VI.—The provisions of the existing law regarding pottahs and the ryot's right of occupancy are distinctly enunciated in these sections. When however, it is said in line 5 of section III that all other ryots, &c., are entitled to receive pottahs at pergunnah rates, ryots having rights of occupancy only are intended. A ryot without such a right can only hold at will and on the terms offered to him. This is clearly stated as regards the term of years for which the pottah is given in Section LXI.

7. I am doubtful as to the policy of extending this right of occupancy to cases of three years' permissive occupancy, as is provided in the latter part of section V. I would let all the incumbrances on a zemindar's estate be as much as possible of his own creation. To have paid rent for three years is by this provision almost as good a title as a pottah. I think the only mode in future of acquiring a right of occupancy should be under a written title.

8. SECTION VII.—But how is the ryot to act if the zemindar will not take his tendered instalment? This is one of the most common modes of extorting among naibs and gomastahs. I think the refusal of a tendered payment should be cognizable as a summary suit under section XVII.

9. SECTION VIII.—The zemindars urge that this curtailment of their power will seriously embarrass their collection proceedings. But why, except from motives of fear, should a ryot be indisposed to go voluntarily to the mâl kutcherry, when the alternative is a summons to the Collector's, which will cost him time and money. The zemindar can enforce his attendance in the latter Court when he falls into arrear, and can get a Collector's injunction on him to attend at the measurement of his holding. The power, and with it the temptation to harass and detain is all that is taken away, and one of the gra-

tifying consequences of this provision will be the discharge of numerous *nugdees* and lateeals who have hitherto fed upon the tenantry.

Letter from Mr. A. Grote, Commissioner of the Nuddea Division (No. 157 Ct., dated the 2nd October 1858).

10. SECTION X.—Ought a notice of enhancement to be necessary in the case of a ryot whose terms of engagement have expired? Ought he not rather to quit occupancy as a matter of course, unless the expired engagement shall have been renewed or some new engagement entered into? If he continue in occupancy it will be by sufferance, and such kind of occupancy is scarcely entitled to be treated with the same respect that occupancy is under a clearer title.

11. This new provision for terminating, should the ryot desire it, the relations between himself and his landlord is a reasonable one, and in some cases will be a great boon. It will prevent many ryots from deserting their villages. I would add after the words "relinquish the lands held or cultivated by him," "*or a portion of them.*"

12. SECTIONS XIV TO XVI.—Is it designedly that the liability of the defaulting ryot to ejection in section XIV is made to depend on the fact of there being an arrear of rent at the end of the year, while that of the farmer or other lease-holder in Section XV to have his lease cancelled, does not commence till an arrear shall have been adjudged to be due? Probably not, as neither ejectment nor cancelment of lease can actually take place, except in execution of a summary decree or order. An adjudication, therefore, on the fact of an arrear having accrued, will be necessary in both cases.

13. SECTION XVII.—I would introduce here into clause 2 "*or tendered*" after the words "or on account of the refusal of receipts for rents paid," I have stated why in paragraph 8 above.

14. Clause 4 is evidently intended to exclude demands for house-rent. See correspondence which took place between this office and the Board when I was Collector of the 24-Pergunnahs some seven years ago, on the subject of suits instituted for rent in the suburbs of Calcutta. The Board ruled that such claims were cognizable summarily by the Collector because the house-rent included ground rent.

15. SECTION XVIII.—The *agent* here referred to is the managing mofussil agent, whether surbarakar, naib, or gomastah. I should like to see this character of agent defined with greater precision. A case lately occurred at Kishnaghur in which a European land-owner in Calcutta (Mr. Mackintosh) summarily sued a Mr. Warner, as an agent for accounts, &c. Mr. Warner held a power of attorney under which he had acted as a principal and he had understood that he was to be admitted to a share of the estates which he managed, but this claim of his was demurred to and he threw up the management. Mr. Mackintosh therefore treated him as a salaried agent. The Collector would not entertain the suit, and I think rightly so under the definition given in section XX, Regulation VII, 1799, which however authorized Mr. Warner to sue any of his own native agents. Under the new Bill which does not limit the landholder's demand to "sudder and mofussil omlah and native agents of every description," the Collector would have been wrong.

16. SECTIONS XIX TO XXI. These are most useful provisions. The Collector has hitherto been shut out from interference in all such cases which are the cause of so many affrays.

17. SECTIONS XXII TO XXV.—These fix the periods within which suits of the seven kinds described in section XVII may be brought.

18. Then follow the provisions for procedure.

19. SECTIONS XXVI TO XXX.—The plaint should, I think, in all cases, contain a specification of the claim, not the substance only; and in suits for arrears under section XXIX, I would insist on a specification being given of the lands. Much injustice is, I believe, now done on vague plaints, for in such cases the defendant ryots have the greatest difficulty in adducing proof for the defence. In ejectment suits specification of land, even if necessary by boundaries, is required by section XXX.

20. SECTIONS XXXI TO XXXIV.—These regulate the service of *dustuks* or warrants of arrests which are to issue only after examination of plaintiff and inspection of his documents and need not issue at all unless the Collector thinks necessary. Tenant occupants of transferable tenures, which are saleable in execution of decrees, are exempted from arrest. I concur in the justice of these

Letter from Mr. A. Grote, Commissioner of the Nuddea Division No. 157 Ct., dated the 2nd October 1858).

provisions. The present practice of indiscriminate arrest of the person on the bare assertion of an arrear being due, is, in my opinion, an abuse of the old law.

21. SECTIONS XXXV TO XL.—These concern the service of the summons, and call for no remark. "Free of cost" in section XL means at the cost of Government.

22. SECTIONS XLI TO XCVI.—These detailed rules of procedure during the progress of the suit and in execution of decree, will be of immense assistance not only to the Collector but to suitors and their advisers, who are now perplexed by every variety of practice.

23. I had thought at one time of suggesting the introduction into section XLI of a provision for service of notice to third parties to suits, so as to give them the right of appearance. The line of defence taken in a large number of these suits is to the effect that the land is held on the terms perhaps as described in the plaint, but that the rent is and always has been taken by somebody else. The issue then turns on the right to collect the rent, and in some districts the practice is to admit petitions of remonstrance in aid of the defence. In this division the practice is not permitted, but the defendant can summon his alleged landlord as a witness, and this will be the course open to him under sections XLIV, XLV, and XLVI of the Bill.

24. The power of discretional revival of suits decreed *ex-parte*, conferred by Section LVIII, I particularly approve of, as well as of the provisions in sections LXV and LXVI for meeting the difficulties which would arise from passive resistance to the Collector's injunctions. The period for which a summary judgment is to have vitality is wisely restricted to three years in section LXXVII. The rules in sections LXXXV to LXXXVIII for adjudication and disposal of claims by third parties to moveable property seized in execution, will much facilitate the satisfaction of decrees.

25. SECTIONS XCVII to CXXX.—These contain the provisions for distraint and replevin.

26. The right to distrain is to extend only to the produce of the land on which the arrear is due, and is not to be exercised at all in respect of land occupied by a cultivator who has given security, nor a year hence, or from the passing of the Act in respect of land for which no kabooliut has been given. I am strongly in favour of these restrictions, and am of opinion that they will not in any way weaken the security for his rent which the landholder has under the present law, while they will at once remove the opportunities which now daily offer for plunder under colour of the law. I am glad, too, to notice the declaration made in section CXXVIII. Magistrates have not always been upheld in treating as criminal trespass the act of an alleged landholder proved to have had no lien whatever on a complainant's property. Many Judges hold that the latter have only a civil remedy for illegal distraint.

27. Whether the agency of the Civil Court Ameens will be the best available for effecting sales of distrained property is perhaps doubtful. The commission on sale proceeds is to be credited to Government, with a view, probably, to increasing the Ameen's rate of salary. These officers have for the most part very large jurisdictions. The provisions of section CXX for cases in which sales do not take place after the Ameen has had the trouble of going to the spot, are far better than the present practice of charging a fixed sum of one rupee on such occasions, which moreover has not the sanction of law.

28. SECTIONS CXLI and CXLII.—The limit of fifty rupees here fixed will render the Collector's order final in a great majority of cases. The Jessore Collector says that the number of such suits instituted last year was 1,910 to 363 above the limit. He proceeds to say—"Out of the former 304 were contested, whereas only 29 were contested out of the latter. According, therefore, to section CXLI, only 29 summary suits during the year would have been open to appeal, and the majority of suits now generally tried by Munsiffs and Subordinate Civil Judges, which will under this Act be decided by Collectors and their subordinates, will, I imagine, be for sums under fifty rupees." By "contested," Mr. Fowle means, I apprehend, contested in appeal. But he perhaps forgets that only such of the 1,910 decisions as simply adjudicated on facts not bearing upon rights would have been unappealable to the Civil Court.

29. This provision of finality is a very important part of the new Bill, and I find it difficult to give to it the same cordial assent which is due to all its

other provisions. For without some statistics to show the extent to which under the present law the Collector's decisions are contested in regular suits, I cannot judge whether they, for the most part, give satisfaction. In the course of my experience in this office I have frequently seen decisions which were in my opinion erroneous and required amendment, though they were beyond my interference.

30. I think, however, that with such a clear Code of procedure as is here laid down, an officer competent to exercise a Collector's full powers ought to be able generally to decide satisfactorily on the mere debt part of the question raised in suits for arrears, or in replevin cases. In suits for damages and for ejectment, and for recovery of occupancy, I would, I think, leave parties their remedy of an appeal by regular suit. I do not understand any of these cases to be exempted from the finality provision by the words "any question relating to a title to land, &c., as between parties having conflicting claims thereto." The Collector's decision is to be final in all cases of a less value than fifty rupees, except where it has pronounced in favour of a right to enhance rent or on a title set up by two conflicting parties to collect rent.

31. If the remedy by regular suit is taken away, there must, I think, be a closer supervision than there now is by the Commissioner of the Collector's decisions, in order that any irregularity of practice may be stopped at once.

32. The provisions of sections CXLII and CXLIII for re-hearing under certain conditions are, I think, very proper. But in section CXLIII is it intended to deprive the Collector of his power to call for and revise his deputy's proceedings without any application or appeal? Section XXII, Regulation IX, 1833, is not among the laws modified in section I of the Bill. The practice under the present law will be found in Rules 13 and 14 of the summary suit series.

Sections of the Bill remarked on.	Purport in brief of the Collector's or Deputy Collector's remarks.	Commissioner's remarks.
SECTION II . .	Deputy Collector Baboo Shib Chunder Deb thinks that this section should provide for the pottah specifying the quantity of land held by the ryot, as this point is of great importance to him.	I do not thinkthat it is necessary to provide for this by law. Most pottahs do contain such specification.
SECTION III .	The Officiating Collector of the 24-Pergunnahs, Mr. Bright, looks upon this section as detrimental to the interests of the zemindar, because the rates of rent fixed by it, which are to be observed in granting pottahs to the ryots being applicable not only to the first grant but also to their renewals, are virtually established for ever, for the concluding part of section XI expressly declares that no enhancement of rent can take place in excess of the rates prescribed in section III. Such being the case, Mr. Bright apprehends that the zemindar would be deterred from improving his lands, because he could hope for no return in the way of increased rental. Neither would the lands be improved by the ryot, whose sole object is to gain enough to pay his rent, and to provide for his family's subsistence. The effect of this apathy on the part both of the zemindar and ryot, would be the eventual deterioration of the value of the lands.	The apparent omission in the text of the Bill has been noticed in my report. The restriction to pergunnah rates laid on the zemindar is confined to the holdings of ryots who can establish a right of occupancy at such rates.
	Mr. Bright further, and his Deputy Collector Mr. Heysham, object to the right of occupancy which payment of rent for three years secures to holders of land. Auction-purchasers of estates who would naturally wish to turn their purchases to advantage, are	This has also been noticed in my report.

Letter from Mr. A. Grote, Commissioner of the Nuddea Division (No. 157Ct., dated the 2nd October 1858).

Sections of the Bill remarked on.	Purport in brief of the Collector's or Deputy Collector's remarks.	Commissioner's remarks.
	debarred from ejecting recusant ryots (so long as they pay their rents), if they desire to do so with a view to getting higher than the prescribed rates of rent by offering their holdings to public competition.	
SECTION VII .	Mr. Deputy Collector Heysham suggests that, in order to follow up the advantages conferred on the ryot by this section, some provision should be made to uphold him when his tender of his kist or instalment has been refused by the gomashta, with the intention of extorting some douceur, or from other fraudulent or malicious motives. This practice leads to summary or civil suits in which the ryot is generally cast, and made to pay the demand with interest and full costs. In order to rid the ryot of this species of oppression, Mr. Heysham suggests that the Collector may be empowered to receive the ryot's tender, and after having granted a receipt for the same. to serve the zemindar with the necessary notice.	I have supported the recommendation here made for making the non-receipt of sums tendered as rent the subject of summary suits under clause 2, section XVII. I do not think, however, that the rejected tenders can be made receivable by the Collector. The privilege would be frequently abused and the practice would occasion inconvenience.
Ditto . .	The Deputy Collector of Baraset suggests that some provision be made to reserve the right of applying to the Criminal Courts for the punishment of parties extorting illegal *abwabs*.	I do not think that such a reservation is necessary; extortion by fraud or violence are of course criminal offences, and the penalties assigned for them on conviction are independent of the civil remedies here provided.
SECTION VIII .	Deputy Collector Sib Chunder Deb suggests that the language of the latter part of this section should undergo some slight alteration, because, as it now stands, it may, with reference to the first part, be held to imply that the zemindar can compel the attendance of the ryot for the purpose of measurement, although such a construction would be contrary to the provisions of section XX of the Bill.	Section XX is sufficiently clear, I think, on this point.
Ditto . .	The Deputy Collector of Baraset objects to this section, because it confers on landholders the undisputed right to measure lands. Is of opinion that the holders of subordinate tenures under the zemindar should not have the power to measure, as it is an engine of great oppression, inasmuch as the poor ryot has to spend a considerable sum every time to buy over the Ameen, in order to protect him from further assessment, by stating the correct quantity of land when there is no excess, and in the latter case, by concealing the fact. Suggests that no estate should be allowed to be measured more than once in twenty years, and that landholders should not be allowed an unrestricted right to measure except in the cases of lands which are being reclaimed from jungle or swamp. Thinks that a permanent jummabundee should be made *once for all*, and kept in the Collector's office.	The Deputy Collector will find the Collector armed with the necessary power to decide on the propriety or necessity of the measurement in section XX.

Section of the Bill remarked on.	Purport in brief of the Collector's or Deputy Collector's remarks.	Commissioner's remarks.
Section VIII .	The Jessore Collector doubts whether this section will work well, because, if zemindars cannot compel the ryots to attend to their summonses, collections might be entirely stopped in disputed taluks. Apprehends that the consequence of this section will be to destroy the zemindar's prestige, and make the ryot in many cases independent and careless about the zemindar's requisitions.	I have noticed this objection in my report.
Section XVIII .	Mr. Deputy Collector Heysham thinks that the suits provided for in this section, should be extended to the sureties of agents or mukhtars, as the latter are generally poor people.	I think this a good suggestion, and would authorize landholders to include their agents' sureties in their suits.
Section XXI .	Deputy Collector Shib Chunder Deb observes that some limitation of time should be fixed within which applications to dispossess grantees of land exempt from revenue ought to be entertained.	I am opposed to this suggestion.
Section XXVII .	The Officiating Collector of Moorshedabad, Mr. W. M. Beaufort, suggests that *all* petitions in a suit, *and not* merely the *first one*, should be written on stamped paper. Says that it is not necessary, however, that all documents, &c., which parties may wish to file, should be accompanied by a petition; would draw a distinction between *petition* and *documents* filed in the regular course of the suit.	I do not agree with the Collector.
Section XXXVII.	The Deputy Collector of Baraset suggests that a duplicate of the statement of claim may be filed by the plaintiff, as the preparation of the copy required to issue with a summons, delays proceedings and entails work on the office establishment.	If the forms of plaint are printed, as I hope they will be, it will not take long to fill them up.
Section XXXIX .	Mr. Deputy Collector Eden, of Baraset, thinks that the party ought to deposit the amount of postage.	Section CXXXI provides for this.
Section XL .	The Officiating Collector of Moorshedabad, Mr. Beaufort, enquires, with reference to this section, how summonses allowed "to issue free of cost" are to be served.	By salaried peons, I presume, or by charging tulubbanah bills to Government.
Section XLIX .	Deputy Collector Shib Chunder Deb, of 24-Pergunnahs, objects to the latter part of this section, which declares that no fee for any agent employed in the conduct of suits under this Act shall be charged as part of the costs. Apprehends that this ruling will fall very hard on poor and ignorant ryots, who can hardly hope for success in suits against their zemindars for exactions of rent without the assistance of some competent agent or mukhtar, and who will be deterred from instituting such suits if they have to incur the above expense. The Deputy Collector suggests that summary suits to enforce the execution of indigo contracts under Regulation VI, 1823, as well	The present practice is to have all parties to settle with their agents, and it does not, I think, require alteration.

Letter from Mr. A. Grote, Commissioner of the Nuddea Division (No. 157Ct., dated the 2nd October 1858).

Section of the Bill remarked on.	Purport in brief of the Collector's or Deputy Collector's remarks.	Commissioner's remarks.
Section XLIX —*continued.*	as those to obtain release from such contracts under Regulation V, 1830, should be made cognizable by the Collector under this Act.	
	Mr. Beaufort, Officiating Collector of Moorshedabad, proposes a new section after section LXXIV, to the effect that a warrant shall not issue if the decree-holder has neglected to take out execution within three months, unless he can show good and satisfactory cause for such neglect. This restriction, the Collector thinks, would merely deprive the plaintiff of the advantage of recovering by summary process, but in no way prevent his prosecuting his just claims in the Civil Court.	But why should the decree-holder be in such a hurry? it may be to the advantage of both parties that time should be given to judgment-debtor.
Section XCVII .	Mr. Deputy Collector Eden, of Baraset, suggests that notice of demand may be first served on defaulter, with the intimation that if demand be not satisfied distraint will follow within three days.	See section CII: the notice there provided seems ample.
Section CVII .	Mr. Deputy Collector Eden, of Baraset, apprehends that the paucity of Civil Court Ameens (there being only six in the whole of the 24-Pergunnahs) will cause great inconvenience to suitors under this Act.	The section provides for the appointment of special Ameens if the Government think proper.
Section CXI .	Mr. Deputy Collector Eden, of Baraset, points out that this section is not clear as to the rules which ought to regulate appeals from Deputy and Assistant Collectors with primary and special powers.	The existing law is not altered by the Bill.
Section CXIX .	The Officiating Collector of Moorshedabad, Mr. Beaufort, suggests, too, that Mofussil Commissioners under Act I of 1839 be substituted for the Civil Court Ameens, unless it is contemplated to abolish the former agency.	
Section CXLI .	The Collector of Jessore, Mr. Fowle, brings to notice a general desire which prevails in his district for the extension of this section to all cases, however small the amount may be. Apprehends that under this section the benefit of appeal will be very limited. Points out that the greatest number of appeals lie from decisions in cases instituted for amounts under fifty rupees.	
Section CXLII .	The Officiating Collector of Moorshedabad, Mr. Beaufort, proposes the following addition to this section—"or for any other causes by which it can be clearly shown to the Collector that there has been a failure of justice."	
Section CXLIII .	Mr. Collector Fowle, of Jessore, objects to this section. Is of opinion that there should be an appeal, at least to the Collector, against all decisions of Deputy Collectors as a matter of right, no matter on what grounds an erroneous judgment has been given.	I prefer the section as it stands, or with the addition which I have proposed.

Letter from Mr. A. Grote, Commissioner of the Nuddea Division (No 157Ct., dated the 2nd October 1858)

Section of the Bill remarked on.	Purport in brief of the Collector's or Deputy Collector's remarks.	Commissioner's remarks.
	Deputy Collector Issur Chunder Mitter, in charge of the Khoolna Sub-Division, thinks that the oppression which is at present exercised in distraint cases, can be attributed to collusion with the distrainer on the part of Sale Ameens, who are for the most part men of corrupt principles, and who lend their countenance to such malpractices in order to indemnify themselves as it were for the miserable emoluments which belong to their posts. Is of opinion that the *desideratum* at present felt could be supplied by investing the Nazirs of Sub-Divisional Officers with power to conduct such sales, which would then be under the surveillance of the Assistant or Deputy Collector. This scheme, he says, will be feasible when the additional sub-divisions now under contemplation shall have been established. Apprehends that the scheme of Civil Court Ameens contemplated by the new Act will have to be abandoned on accouut of the inconvenience which is likely to result from the paucity of their number, and that the present agency of Sale Ameens will be continued. Suggests therefore that intimation may be given by the distrainers of intended distraints to the Sale Officer, who should record the fact immediately in his diary and communicate it to his superior. Thinks that this innovation will operate against the occurrence of illegal sales on fictitious distraints.	These nazirs and burkundauzes in sub-divisions are nominees of the nazirs at the sudder stations, ill paid and by no means equal in position to the Civil Court Ameens.

A. GROTE,

Commissioner.

Letter from Mr. F. Gouldsbury, Commissioner, Rajshahye Division (No. 91, dated the 30th October 1858).

No. 91, dated Rajshahye, the 30th October 1858.

From—F. GOULDSBURY, Esq., *Commissioner; Rajshahye Division,*

To—The Secretary to the Board of Revenue, Lower Provinces.

IN reply to your circular No. 12 of the 20th June last, I have the honour to forward, in original, the returns of the Collectors in this Division to the call made upon them for the expression of their opinions upon the proposed Bill for the recovery of rents published in the *Government Gazette* of the 25th November 1857.

2. The following specification of the dates on which these returns were received in this office, will show the Board that it was impossible for me to have complied with their requisition within the time specified :—

From the Collector of Rajshahye, 28th June 1858.

From the Deputy Collector of Bograh, 8th July 1858.

From the Deputy Collector of Maldah, 14th July 1858.

From the Collector of Rungpore, 20th July 1858.

From the Collector of Dinajpore, 2nd August and 20th September 1858.

From the Deputy Collector of Pubna, 14th October 1858.

3. Some excuse for the delay may, however, be found in the inordinate length of the Bill, which contains 150 sections, each of which required separate and careful consideration before a well-digested report on a subject of such great importance, involving, as it does, an entire change in the summary suit

Letter from Mr. F. Gouldsbury, Commissioner of he Rajshahye Division (No. 91, Dated the 30th October 1858).

law, could be drawn up; of the reports now submitted, those of Messrs. A. Jackson, Craster, and Morris, appear to be most deserving of notice.

4. The provisions of the first seven sections of the Bill appear to me unobjectionable, and in some respects and improvement on the existing system; but I concur with Messrs. Jackson and Craster in thinking that it would be inexpedient to prohibit the zemindars from interfering with their ryots except through the medium of the Collectors' Courts, as it is the object of sections VIII and IX to do: I am not aware that any power is vested in the zemindars by the existing law to *compel* the attendance of their tenants for the adjustment of their rents. It is true that they are in the habit of summoning them to their cutcheries for that purpose, and this practice has hitherto been tacitly allowed from a conviction of its necessity. I have no hesitation in affirming that it will be impossible for a zemindar to collect his rents with any degree of punctuality if he is not allowed to summon his ryots to his cutchery, while it will have the effect of more than doubling the number of cases brought before the Collector. In fact, the Collector's Court will be the "zemindari cutchery" of the district, and no amount of labour will enable that officer and his subordinates to get through the mass of business that will be brought before them in the summary suit department alone.

5. I believe it is a well-known fact that very few ryots pay their rents until they are called upon to do so, and that it is only by a constant system of "tullub" and "tuccaza" on the part of the zemindar or his agents, that anything like regularity of payment can be ensured. This has been the custom of the country from time immemorial, and I think we have had sufficient experience of the ill effects of interfering with old established customs in India. I think with Mr. Craster, that the ryots are quite sufficiently protected by the existing laws, and I believe that much more oppression is committed under the colour of legal process, than by the zemindars before they have recourse to the "*ultima ratio*" of a summary suit.

6. I see nothing to object to in the provisions of section X and the six following ones.

7. Sections XVII to XXI are unexceptionable in theory, but in practice they will have the effect of imposing a great amount of work upon the Collectors, and entail the necessity of appointing Extra Assistants or Deputy Collectors in each district.

8. The time prescribed in sections XXI, XXII, and XXV for the commencement of suits of the nature therein stated, appears proper; but I see no reason why three years should be allowed for instituting the suits referred to in section XXIV.

9. The rules for the institution of suits and of procedure laid down in sections XXVI to CXXXV appear to have been very carefully drawn up, and have my full approval, as also have those contained in sections CXXXVII and CXXXVIII; but I cannot think it would be advisable to make *all* orders passed by a Collector appealable to the Commissioner. At present appeals in summary suits are only admissible by the Commissioner on the ground of the irrelevancy of the law, and I see no reason why this salutary rule should be departed from. All summary decisions are liable to be contested by a regular suit, so that it would merely prolong the decision of the case, and thereby encourage litigation, to allow appeals in all cases, to say nothing of the increase of work which it would impose upon the Commissioner.

10. The remaining sections of the Bill do not seem to call for any particular remarks.

Memorial of the British Indian Association (dated the 14th February 1859).

Dated Calcutta, the 14th February 1859.

To—The Honourable the Legislative Council of India.

The humble petition of the British Indian Association.

Showeth,—That your petitioners regard the "Bill to amend the law relating to the recovery of rents," as, on the whole, eminently calculated to simplify the laws relating to landlord and tenant, at present scattered over a variety of contradictory and, in some instances, unintelligible enactments, equally uncer-

tain and unsafe, whether for reference or as authority for the solution of differences between landlord and tenant. But in the well-meant attempt to define certain rights and prevent certain abuses, which, be it observed, never fail to creep in under the best system of administration, your petitioners perceive certain provisions in the Bill, which they regard as on the one hand encroachments on the rights secured to landholders by immemorial usage and the laws, and on the other calculated materially to hinder the recovery of their dues, the speedy realization of which the enactments to this date have in the interest of the Government aimed to facilitate. Your petitioners feel, and not without pain, that the task they have undertaken is an ungracious one, being compelled to confine themselves in their remarks, principally in the cause of the landholders from the circumstance of most of the provisions of the Bill having been framed, as your petitioners hope to make it evident, without a due regard to the interests or the vested rights of that class.

Memorial of the British Indian Association (dated the 14th February 1859).

2. Section 2 declares that every ryot is entitled to receive a pottah, but prescribes no penalty for withholding one. The earliest law on the subject makes the same provision, and attaches a heavy penalty to the violation of it—"a fine proportioned to the expense and trouble of the ryot." No case can, nevertheless, be cited as having ever been instituted by a ryot in enforcement of this privilege, thereby clearly indicating the inutility of the rule, and the same not having been dictated by the requirements of the country. The ryot, except when money is to be laid out in the improvement of his holding, prefers cultivating and giving up land at his pleasure, and giving notice of his intention before the season of cultivation, to being bound down to a certain spot for a fixed period by the terms of a kabooliut. He is also in the habit of varying the extent and locality of his cultivation, for as he never manures the soil, he finds it profitable to abandon a spot which he has impoverished by cultivation, and take up another which has been invigorated by lying fallow or by the deposit of fresh soil; and in such cases, he pays rent according to the quantity of land ascertained to be covered by his crops. Hence the original law, in reference to the exchange of pottahs and kabooliuts, has never come into operation. But, it may be asked, why your petitioners object to a rule or rules which they describe as merely inoperative and uncalled for. They beg leave to point to section 99 of the Bill, as a proposal to frustrate the landholders in the exercise of a just and legal right, without any adequate or conceivable object in view. Though the ryots have no desire to obtain pottahs, yet that section declares that no landholder shall collect his just dues by distraint, except on the previous production of kabooliuts. Thus, without any fault of the landholders, an embargo is at once laid on his exercise of the right of distraint. Your petitioners are not unconscious of the benefits which would result from the interchange of pottahs and kabooliuts both to the landlord and the tenant. What they respectfully desire to submit to your Honourable Council is that it is not the fault of the zemindar that the earliest law on the subject has been rendered inoperative, and that fifteen-sixteenths of the tenures in Bengal are at present held without the interchange of pottahs and kabooliuts. Any law, therefore, with a penalty attached for the non-observance of the same, in the manner provided by section 99 of the Bill, will have the effect of encouraging the ryots to withhold, and successfully too, the payment of their just rents, until the zemindar has, by a long course of litigation, been enabled to obtain kabooliuts from them. For it is not to be supposed that, after being once made aware of the ready power of annoyance which the law placed within his reach, any ryot will voluntarily give a kabooliut of the description which the landholder is entitled to demand. The consequence to be dreaded from such a state of things is either that the Courts will be swamped with suits for the enforcements of kabooliuts, which with the present machinery it will be next to an impossibility to get through within any reasonable period, or that the zemindar will betake himself to fabricating kabooliuts to enable him, under the proposed law, to realize his just dues by process of distraint, which, in the generality of cases, is his only remedy. Your petitioners would, therefore, suggest that either section 99 of the Bill be made applicable only in the case of arrangements for land after the passing of the Bill, or that a clause be added declaring that the landholders will be considered to have satisfied the requirements of the above section, if they have, within a reasonable time, say, three years, of the passing

Memorial of the British Indian Association (dated the 14th February 1859)

of the Act, deposited with the Collector of the district pottahs for such of his ryots as have been holding their lands without them.* That on receipt of the same the Collector is to issue notice to each ryot, summoning him to receive the pottah and give a corresponding kabooliut, or institute a suit contesting the fairness of the terms inserted in the pottah. As a check upon the landholders against inserting terms in the pottahs other than fair, it may be likewise prescribed that in the event of the landholder being cast in the suit arising therefrom, besides the ordinary costs of the suit, he will be liable to a fine to the extent of half the amount of such costs, which, in the case of the ryot, might be limited only to the costs of the suit—a consideration due to the weakness of his situation. Your petitioners would respectfully beg to be understood, that it is not from a captious spirit of opposing a beneficial measure that they have been induced to offer these remarks, but from a sincere conviction of the unnecessary hardship –not to say injustice—which the proposed law is calculated to entail upon the landholders, and the encouragement it offers to perjury and forgery, which, your petitioners conceive, will be effectually checked, if the exchange of pottahs and kabooliuts were directed to be made with the knowledge of the Collector of the district, in the manner suggested by your petitioners.

* Regulation IV of 1794, section 5.

3. Before proceeding to the consideration of sections 3, 4, and 5 of the Bill, your petitioners beg leave to submit to your Honourable Council a summary of the different classes of tenures which are to be found in Bengal under different local names, the rights and privileges attached to some of them at the decennial settlement, and the effect which the successive sale laws have had upon them. This, your petitioners conceive, will facilitate the appreciation of the remarks which they have to offer upon the provisions of those sections. The tenures, existing at and about the date of the settlement, may be classed as follows:—

1*st*.—Such as without the right of property have still the right of occupancy attached to them, subject to the payment of such rent, progressive or otherwise, as may have been stipulated between their holders and the zemindar, when the latter entered into engagements with Government for the payment of public revenue. These are the dependent taluks described in section 48 of Regulation VIII of 1793.

2*nd*.—Such as have the right of occupancy guaranteed at a fixed rent, in consideration of their having been so held for twelve years prior to the decennial settlement. These are the istemrari or mokurrari tenures described in section 49 of the above Regulation.

3*rd*.—Khoodkasht tenures described in clause 2, section 60, Regulation VIII of 1793, or tenures which were held by resident cultivators at the time when the decennial settlement was concluded, and which tenures were continued to them, subject to the payment of rent at the pergunnah rates.

4*th*.—Such as are governed by written contracts, entered into between the tenants and the landholders, prior or subsequent to the decennial settlement for lands other than those described in sections 48, 49, and 60 of Regulation VIII of 1793.

5*th*.—Such as are held from year to year, or tenures at will.

4. The condition of these tenures was gradually affected by the revenue sale Regulations promulgated from time to time. By the Regulations passed prior to Regulation XI of 1822, dependent taluks of the nature described in section 48, Regulation VIII of 1793, which existed at the decennial settlement, and which were not found at the time or subsequently to be liable to enhancement, as provided in section 51 of that Regulation, were declared to be exempted from enhancement, and the holders not liable to dispossession, except upon proof in a regular suit by the auction-purchaser of his title to enhance the rates.

Taluks existing at the decennial settlement, which had been proved liable to increase in the manner stated in section 51, Regulation VIII of 1793, were

liable to enhancement at the pergunnah rates, but the holders of them were not subject to dispossession.

Taluks created since the decennial settlement, like the above, were declared liable to enhancement at the pergunnah rates with the same reservation as to dispossession.

Istemrardars were held exempt from dispossession or enhancement.

Khoodkasht ryots holding their lands prior or subsequent to the decennial settlement were held to be liable to enhancement at the pergunnah rates, but not to dispossession.

Pykasht ryots were subject to dispossession at the option of the purchaser at the expiration of their leases.

It having appeared that the pergunnah rates were various, fluctuating and uncertain, it was provided by section 7, Regulation V of 1812, that the lands liable to enhancement under the operation of the sale laws should be assessed at the rates obtaining for the time in adjacent lands of the same description.

5. It would appear from the foregoing that, up to 1812, the Legislature considered it a sufficient protection to the public revenue, as well as the interests of the purchaser, to authorize the cancelment of leases (except those of the exempted classes defined above), and the enhancement of the rates according to a fixed rule, that is, the pergunnah rate, if any there were, or the rate obtaining for the time being in similar lands adjacent, and did not contemplate ejectment, except in cases provided in section 7, Regulation IV of 1794, that is, when the terms of settlement, according to the pergunnah rates, were declined by the under-tenants.

6. Regulation VIII of 1819 took a different view of the principle which should govern under-tenures after revenue sales—evidently to check frauds, which must have been extensively practised by the proprietors.

7. This principle of annulment of tenures was more clearly and in unmistakeable language laid down in Regulation XI of 1822, and in section 30 of that Regulation it was declared that a revenue sale, for reasons stated therein, annulled all the tenures created subsequent to the settlement, or such as the original engager might have set aside, except *bonâ fide* leases of ground for houses, &c, saving likewise, as enacted in section 32, the exempted classes of tenures which were defined and protected in the following manner:—

"The above rules, or any other rules, contained in the existing regulations by which persons are declared competent, under certain restrictions, to annul engagements contracted between former proprietors and their under-tenants, and in certain cases to enhance the rent payable by such tenants, shall not be construed to entitle the purchasers of land at public sales to disturb the possession of any village zemindar, puttidar, mofussil talukdar, or other person having an hereditary transferable property in the land, or in the rents thereof, not being one of the proprietors party to the engagement of settlement, or his representative. Nor shall the said rule be construed to authorize any purchaser as aforesaid to eject a khoodkasht kudeemi ryot or resident and hereditary cultivator, having a prescriptive right of occupancy. Nor shall a purchaser demand a higher rate of rent from an under-tenant of either of the above descriptions, than was receivable by the former malgoozar, saving and except in cases in which such under-tenants may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malgoozars from the old established rates, by special favour, or for a consideration, or the like, or in cases in which it may be proved that, according to the custom of the pergunnah, mouzah, or other local division, such under-tenants are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government."—*Section 32, Regulation XI, 1822.*

8. Now the village zemindars and others who are described to have an hereditary transferable property in the land, must, to be consistent with the principle laid down in section 30, mean such as had or acquired rights of occupancy or property in the village or land, in the manner defined in sections 48, 49, and 51 of Regulation VIII of 1793, and section 14, Regulation I of 1801, and not in reference to tenures which originated with the original engager or his successors, or which he could set aside as provided by section 51 of Regulation VIII of 1793, but nevertheless, the wording "hereditary transferable property in the land" was liable to considerable misconstruction, inasmuch as it was considered to apply to all tenures which the holders had come to the possession of by purchase. The Board of Revenue, in paragraphs 114 to 125 of their letter to Government hereto appended, dated the 13th March 1838,

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forwarding draft of a Sale Law by Mr. Walters, have pointed out and discussed this liability to misconstruction.

9. In pursuance of the principle laid down in section 30, Regulation XI of 1822, khoodkasht tenures created since the decennial settlement were likewise declared liable to be annulled, and the latter part of section 32 provided as follows:—"Nor shall the said rule be construed to authorize any purchaser, as aforesaid, to eject a khoodkasht kudeemi ryot, or resident or hereditary cultivator, having a prescriptive right of occupancy." This can only apply to those khoodkasht ryots who held their lands at or before the settlement, and whose right of occupancy, on payment of rent according to a fixed rule, is guaranteed by section 60 of Regulation VIII of 1793. The wording of the section, it should be observed, has given rise to considerable doubt and misapprehension as to the precise nature of the tenure which it was intended to protect from annulment, since it has been contended, that tenures which have passed through more than one generation would acquire the character of a hereditary khoodkasht tenure. This cannot be the correct interpretation, since a tenure in one case may pass through three generations during the time that another has not passed through one, and it will be giving preference, not by the length of possession, but by the varying rate of annual mortality which might prevail among the occupiers of the tenure. Such an interpretation besides would be most indefinite and inconsistent with the principles clearly and broadly laid down in section 30.

10. The doubts and uncertainties which the provisions of section 32, Regulation XI of 1812, gave rise to and which are alluded to in the Board's letter cited above, so far as the village zemindars, &c., were concerned, were cleared up by Act XII of 1841, and subsequently, Act I of 1845, and the classes of tenures which the first portion of section 32, Regulation XI of 1822, intended to protect, were clearly defined in section 26 of the Act.

First.—Tenures which were held as istemrari or mokurari at a fixed rent more than twelve years before the permanent settlement.

Secondly.—Tenures existing at the time of the decennial settlement, which have not been, or may not be, proved to be liable to increase of assessment, on the grounds stated in section 58, Regulation VIII of 1793.—*Section 26, Act I of 1845.*

11. The khoodkasht tenures were, however, left with as great liability to misunderstanding as in the latter part of section 32, Regulation XI of 1822: but that the Legislature only meant to protect kudeemi khoodkasht tenures having rights of occupancy at fixed rates, or at rents assessable according to fixed rates, *viz.*, such as existed at or before the settlement, and not created subsequently, may be gathered from the observations of the President in Council in the table of remarks upon the Sale Law of 1841, in reference to the suggestions of the Landholders' Society upon this class of tenures. The table was forwarded to the Government of Bengal, with the letter of the Secretary to the Government of India, dated the 10th February 1840. The remarks of the Landholders' Society and the remarks of His Honour in Council thereon, are hereto annexed.

12. Act I of 1845 introduced two other important exceptions to the class of exempted tenures, which Regulation XI of 1822 did not contain, *viz.*, *bonâ fide* leases in perpetuity for the clearing of jungle, and farms granted in good faith and at fair rents for terms not exceeding twenty years, with the sanction and approval of the Collector.

13. This being the state of the existing laws governing tenures in Bengal, as they stood at the settlement, and since the passing of the several sale laws, it is now for your petitioners to show how far the rules laid down in the Bill under notice are consistent with, or opposed to, them.

14. Section 3 proposes, first, that hereditary ryots holding lands at fixed rates of rent are entitled to receive pottahs at those rates. The vague terms in which ryots entitled to receive pottahs at fixed rates are described, are liable to considerable misconstruction, and calculated to give rise to litigation. The ryots whose tenures are intended to be protected from enhancement are evidently those that are described in sections 48, 49, and 51 of Regulation VIII of 1793, and since re-enacted in the several sale laws, being no other than village zemindars, &c., existing at the settlement, and whose lands were not

proved at that time or subsequently, to be liable to increase, as provided in section 51 of Regulation VIII of 1793, and istemrardars described in section 49 of the above Regulation. The honourable framer of this Bill appears to have partly adopted the definition of section 32, Regulation XI of 1822, the objectionable character of which has been pointed out in paragraph 8 of this petition. The tenure intended to be protected should, therefore, be so defined as to prevent any possibility of mistake as to their character. All other ryots, the section continues, are entitled to receive pottahs according to the rates for the time being in the pergunnah, or, when such rates are not known or recognized, according to the customary rates payable for lands of a similar description in places adjacent, &c. The principle for the first time recognised in 1819, and since broadly laid down in section 30, Regulation XI of 1822, that a sale for arrears of revenue annulled all tenures, and not leases as before, which originated with or were subsequently created by the first engager at the decennial settlement, or his successor, is overlooked; and the old sale laws, which, under such circumstances, cancelled leases merely, are sought to be revived. It is foreign to your petitioners' present purpose to say more upon this innovation than that it cannot be enforced in the case of such estates as have changed hands under the operation of the sale laws since 1822, inasmuch as they were sold upon the declaration of the right of annulment of all tenures, with certain exceptions, which those laws conferred upon the purchaser at a sale for arrears of revenue. Proprietors of such estates, therefore, being entitled, with certain exceptions, to make any arrangement for the lands comprised therein, as a sense of their own interest may suggest, their right cannot be restricted by any subsequent enactment to the annulment of the leases simply, and the settlement of the lands covered thereby, according to the pergunnah rates as the section under notice provides. The power of ejectment is seldom if ever exercised, but his deprivation of that power, and with it the consequential right of settlement at discretion, that is, at rates which he thinks the land is capable of, will throw considerable difficulties in his attempts to rid the lands of the encumbrances imposed upon them by the defaulting proprietor, though evidently it has been the object of the Legislature, since 1822, to facilitate that object. Every one, at all conversant with the land revenue of the country, must be well aware that the rates, at which the different lands in close contiguity to each other are held, vary considerably. A zemindar, alive to his own interests, may have revised the assessment according to the capabilities of the land for the time being, taking into consideration all the circumstances which should regulate the rate of land; whilst another, regardless of his legitimate rights, may have continued the same rates which prevailed some fifty years since, when some parts even of Calcutta were the a bode of tigers. What is to guide the Judge in the determination of the rate? The zemindar, in support of his claim, will cite the highest rates obtaining for similar lands adjacent to his, and the ryot the lowest. If the Judge be favourable to the zemindar, he will adopt his evidence, if otherwise, that of the ryot; or he may form his own opinion from the numerical strength of the testimony produced on either side. If your Honourable Council wish to adopt a practical, instead of an imaginary, standard, in cases where the rent is assessable under a fixed rule, your petitioners would suggest the adoption of a certain proportion of the gross produce as the rent exigible from cultivators. Rent, it is admitted, is a portion of the produce yielded as an equivalent for use and occupation of the soil. What is the portion of the produce to be considered as the rent? According to the customs of the country, from time immemorial, it is one-half, as determined by Lord William Bentinck, in his celebrated circular on resumption and assessment, after mature consideration of all the authorities on the point. Your petitioners believe that your Honourable Council will admit that those, to whom the proprietary right in the soil is adjudged, are entitled, at all times, to receive such portion of the produce; and that, in estimating the money value thereof, even the most inexperienced Judges cannot err, the points of enquiry being reduced to the quantity and description of the crop which the land sought to be assessed annually yields, and the market value for the time being of the same.

15. *Section* 4.—The same disregard of the existing laws, and the rights accruing therefrom to purchasers at a revenue sale, is likewise observable in this section. As shown in paragraph 9 every resident cultivator has not a

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right of occupancy, but only such as held their lands as such at or before the decennial settlement; nor, as regards them, is the purchaser at a revenue sale, whether by laws prior or subsequent to 1822, debarred from assessing the lands held by them at the rates obtaining for the time being. This is quite clear from the provisions of section 60, Regulation VIII of 1793, which first defined the tenures, as also section 10 of Regulation LI of 1795 (the last for Benares), section 32, Regulation XI of 1822, and section 26, Act I of 1845. For further elucidation, your petitioners beg leave to append copies of minutes by Messrs. Leycester and Ross, upon the draft of a law prepared by Mr. Harington, investing such tenants with rights of occupancy at a fixed rate. As regards khoodkasht ryots created since the settlement, the sale laws prior to 1822, as has been shown above, give the purchaser the right of assessing the lands held by them at the pergunnah rates; and Regulation XI of 1822 and the subsequent enactments, render those tenures liable to annulment. The qualifying part of the section under notice, wherein a distinction is attempted to be made in regard to khoodkasht tenures on khamar or seer lands, is most vague, indefinite and ambiguous, and could not be made, if so intended, more liable to misconstruction at the hands of unprofessional Judges generally ignorant of the principles of the revenue laws. This opinion is not hazarded by your petitioners; but in proof of its being well-founded, they refer to the subjoined extract* from the published minute of the Lieutenant-Governor, from which it will be seen that, though he thinks sections 3 and 4 of the Bill to have the same object, yet Mr. Raikes regards them as subversive of the rights conferred on purchasers of estates at revenue sales, and it need not be pointed out which construction is more likely to prevail with judicial officers.

16. *Section* 5.—It has been shown in paragraph 12 that Acts XII of 1841 and I of 1845 introduced two classes of exceptions, not contained in the prior sale laws, one of which was *bonâ-fide* leases in perpetuity for clearance of jungle. By the sale laws prior to 1822, such tenures were liable to enhancement at the pergunnah rate, and, by the principle laid down in section 30 of Regulation XI of 1822, to annulment. A reservation should therefore be made in respect of purchasers at a revenue sale prior to the passing of Act XII of 1841, with regard to leases granted by the defaulting proprietor for the clearing of jungle. In the latter part of this section it is proposed to confer a privilege on resident ryots, in total disregard of the rights guaranteed to the proprietors engaging with Government for the public revenue upon their estates, and the rights conferred by the several sale laws upon purchasers at a revenue sale—that is, the right of occupancy to resident ryots in lands for which they have paid rent for three years. After what has been stated above, your petitioners deem it unnecessary to repeat that no new rules or laws can be passed subversive of the vested and guaranteed rights of the proprietors, as this part of the section is calculated to do.

17. While on this subject, your petitioners cannot too strongly express their regret at the unacquaintance of the generality of the Judges of the present day with the elements of the revenue laws, and the consequent inability of such officers to apply the provisions of those laws to particular cases brought before them for adjudication. In proof of this, they need only refer your Honourable Council to the conflicting decisions every day passed by the Sudder Court in cases affecting the landed tenures in Bengal. They have no hesitation in affirming that much of the litigation and the consequent ill-feeling between the zemindar and the ryot is owing to the mistaken idea of right which such decisions impart. The ryot, under the influence of the delusion thus created in him, resists the just demands of the zemindar, who, in his turn, resorts to unconstitutional means for the enforcement of a right, for the adjudication of which he is too diffident of the constituted tribunals to apply to them. But, as if the difficulties of the subject and the inexperience of the

* Mr. Raikes, Judge of the Sudder Court, observes that, by numerous precedents since the enactment of section 26, Act I of 1845, it has been determined that an auction-purchaser may eject or enhance at discretion the rents of all tenants, except those of the description specially protected by the section in question; whereas sections 3 and 4 of the present Bill extend that protection to other classes, and thus run counter to former legislation, and to rulings of the courts founded thereon. I apprehend, however, that the object of that part of the Bill was no other than that of Act I of 1845, namely, to declare and uphold the rights of khoodkasht and kudeemi ryots, which ryots I take to be the class intended by the expressions "hereditary ryots holding lands at fixed rates" and "resident ryots and cultivators." Perhaps the opportunity should be taken to define what has always needed definition, namely, the terms "khoodkasht and kudeemi ryots."

Judges were not sufficient obstructions to the administration of justice, the laws are worded in such a manner, and the terms so obscurely defined, that none but the authors of them are able to interpret them. As the Board observe, in their letter already cited, "considerable confusion and difficulty are occasioned by the *obscurity of the laws* regarding the rights acquired by a purchaser at auction sale, and the consequences to the under-tenants," and there has been a "*varying* and *contradictory* execution of the law, an uncertainty on all hands as to the position of under-tenants, difficulty and imperfection in giving and obtaining possession of estates purchased at public sales for arrears of revenue, and generally *distrust, misunderstanding, litigation,* and *discontent.*" With reference to the Bill, the Lieutenant-Governor thinks that "*perhaps* the opportunity should be taken to define *what has always needed definition,* namely, the terms *khoodkasht* and *kudeemi ryots*;" and Mr. Sconce, a Judge of the Sudder, whose office it is in the last resort to arbitrate on conflicting constructions, it is obliged to ask: "Is there any distinction between the word *resident* and the word *hereditary*; and if there be a distinction, to what does it amount?" and then proceeds to state that he *supposes* the word *resident* imports *permanent residence* and the latter *hereditary occupancy*, and that both are the equivalents of khoodkasht and kudeemi ryot. It is thus evident that the proposed Bill, by neglecting to define the nature of the tenures entitled to protection, involved the subject in more than its original obscurity, and prepared the elements of unceasing misconstruction and interminable litigation.

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18. The latter part of section 7 proposes that "receipts for rent shall specify the periods on account of which the rent is acknowledged to have been paid." With due deference, your petitioners submit that the words quoted are not explicit enough. Your Honourable Council may be aware that, with regard to receipts of the kind in question, the usage of the country has been to make mention in them of the year for which the rent is received, *viz.*, either the current year or the past year, as the case may be. But the use of the word "periods" in the section involves the matter in great obscurity. The term is susceptible of various interpretations, and may be a fertile source of doubts and disputes. If it merely mean the whole year, making of course a distinction between the current and the past, your petitioners will not object to it; they nevertheless think that the meaning of the provision should be made clear and intelligible. But if by the term period it is intended to limit the receipt to different instalments of the year, your petitioners apprehend it will give rise to considerable difficulty and litigation. At present the custom of exchanging pottahs and kabooliuts is seldom observed. The different instalments by which the payment of the ryot's rent is regulated are equally undefined. Until, therefore, the provisions contained in sections 2 and 6 come into full operation, the rule in question cannot have effect without changing the entire existing system.

19. By section 8 it is proposed to abolish "the powers vested in zemindars and the landholders of compelling the attendance of their tenants, for adjustment of their rents, or for any other purpose." Your petitioners regard this provision as highly objectionable, believing as they do in the utility, and even necessity, of the existing rule. The power of summoning the ryot to the zemindar's cutcherry on necessary occasions is so essential to the management of an estate, that every one with a practical knowledge of its working will allow that its abolition will bring the machine of the zemindari system to a stand-still. It is from this belief and conviction, your petitioners sincerely believe, that the Legislature legalised a power which the zemindars had enjoyed from time immemorial, and in the exercise of which they had met with vexatious interference from the Magistrates of the time. Indeed, the rights of the zemindars could not be exercised, and the duties to the State, which are imposed on them under heavy penalties, could not be performed, were the power to be withheld from them. Whether for the satisfaction of the requisition of Government, or for the measurement of land, or for the adjustment of accounts, particularly in the case of auction purchase or possession acquired under a decree, the attendance of the ryot at the zemindar's cutcherry is equally indispensable. The zemindar has to inform the police of crime, and assist in the discovery and apprehension of offenders, and he has to provide

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supplies for troops as well as boats and bearers when ordered. But these duties he cannot attend to, if he is deprived of the power, or, in other words, of the means of performing them; and with this power withheld, difficulties will arise against the zemindars, which are now comparatively rare. It is said that the abuse of this power suggests the withdrawal of it as proper. But those who urge this, not merely forget all the reasons for which it was granted, and which render the continuance of it indispensable, they overlook the injustice of punishing the many for the crimes of the few. For even the Lieutenant-Governor, while approving of the proposal of the Bill, on account of "grave abuses" and "intolerable oppression," does not deny that "the withdrawal of this power will be severely felt by some small zemindars (myriads ?) whose ryots have every means of ecape." Your petitioners therefore respectfully submit that it will be as reasonable to deprive the landholders of a power which is acknowledged to be necessary for the collection of their rents and the performance of various duties imposed upon them by the State, because of the demerits of the few who occasionally abuse the power in question, as to abolish all contracts between man and man, because a few violate the most solemn engagements, or close all courts of justice because false claims are sometimes preferred in them. The wording in the concluding part of the section—"But nothing in this Act shall be held to restrict the right of landholders to measure any land in respect of which rent is paid to them," &c., is open to objection, since it may be construed to restrict the zemindar's right of measurement to rent-paying lands, and not lands for which rent is not paid, but which may be liable to it. The proviso, "that such measurement is not at variance with the conditions under which the land is held by the persons by whom such rent is paid," also opens a door for great doubts and misgivings. It is true that there can be no mistake as to the right of the zemindar of measuring all lands comprised in his estate, except where he has, by express engagements, waived the exercise of this right. But the qualification inserted in the latter part of the section under comment, equivocally expressed as it has been, is calculated to give rise to endless doubts and disputes, and to lead many officers of the class, before whom such questions come for adjudication, to conclude that the right of measurement is thus reserved to the zemindars only where there are written engagements between the parties providing for such measurement. Thus it will not only defeat the intentions of the Legislature, but will be virtually disallowing one of the most essential rights conceded to the land-holders by the permanent settlement.

20. Section 10 requires that, for the enhancement of rent a notice should be served on the under-tenant, ryot, or cultivator before the month of Jeyt, specifying the rent to which he will be subject for the ensuing Fusli, or the current Bengal, year. It has not been mentioned within what period the notice should be served. Your petitioners are of opinion, that the period should be limited to a fortnight from the receipt of such notice by the Collector. When the Legislature of prior days enacted that such notice should be served on or before Jeyt, it was so ruled with a view to assist the ryot to settle matters beforehand, as he was thus enabled to know the intention of the zemindar on the subject, before the season of paddy cultivation, which is the chief crop of Bengal, arrived. But this argument does not hold good with lands which do not yield paddy; and with regard to them, the service of notice for enhance-ment of rate should, your petitioners submit, be regulated by the nature of the principal crop and the season of its cultivation, and not be made compulsory on or before the month of Jeyt. Your petitioners do not see the propriety of the landholder serving notice on tenants whose leases have expired, or of his waiting for enhancement of rent of the lands of those ryots, till a certain time is allowed to pass, when, in fact, he can eject such tenants under the provisions of section 19 of this Bill. The same remarks also apply to tenures which have become cancelled by the sale of the superior tenures.

21. Section 12 gives the ryot the liberty of relinquishing his holding, whether held for years, or in perpetuity, provided he gives to the zemindar timely notice of his intention; and if the zemindar refuse to accept or sign any notice so given, the Collector shall compel him to do so. Thus a ryot will have the freedom of violating his own engagement whenever he chooses to do so, but the zemindar must continue bound by the terms of his agreement.

Your petitioners believe that rights must be reciprocal, or there can be no justice. When the ryot is readily invested with the right of relinquishing his lands, equity demands that the zemindar should have the privilege of ejecting his tenant, whether with or without engagement when reasons for so doing exist. Your petitioners are, however, aware of the consequence which such a state of things will lead to, and they therefore recommend that no right, fraught with such mischief, be conceded to one party to the prejudice of the other.

22. With reference to section 20, your petitioners beg to observe that, unless the cases in which the zemindar shall not have the power to measure lands be accurately defined, it will be detrimental to the landed interest of the country and subversive of the intentions of the Legislature, to invest the Collector with the absolute power of allowing or disallowing any application from the zemindar for such measurement. The Collector will then be guided by no settled rule of action, and cases may not unlikely occur wherein his caprice may prevail over his judgment.

23. The period of three years allowed in section 24 for the recovery of arrears of rent appears to your petitioners to be too short. It will conduce to the interests of the ryot if the period be extended to six years; for such a provision may enable the zemindar to follow a less strict course in the collection of rent, for which there will otherwise be left no room.

24. In suits for recovery of rent. the jumma-wasil-baki papers are made by section 29 the principal evidence of such claims. But these papers, from various reasons, as your Honourable Council may be aware, may not in every instance be available; and where other satisfactory proofs can be adduced, their production should not, your petitioners submit, be absolutely required.

25. Section 31 makes the issue of warrant of arrest of a ryot dependent on the pleasure of the Collector. The object of issuing the warrant of arrest at once is to give the ryot no time to decamp or evade the law, which will be entirely frustrated, if the order of arrest be made subject to a formal investigation by the Collector. If, however, this provision be intended as a security against the ill-treatment of the ryot, that end can be well attained by providing stringent rules against the abuse of this power, instead of rendering the means of easy recovery of rent ineffective through delay, and almost encouraging the ryot to a resistance of payment.

26. The security provided in section 33 should not, your petitioners submit, be made optional with the Collector.

27. Your petitioners regret to observe that no means have been taken to simplify the procedure in suits of the nature which come under the proposed Act. The same pernicious elements of delay, expense, and litigation, which prevail in the civil courts, are introduced into it by sections 34, 35, 36, 41, 43, 44, 45, 46, 51, 55, and 58, while no provision has been made for the prevention of frauds and machinations.

28. The provision in section 45, borrowed from the new Civil Code, is quite out of place here. In a Civil Code its objectionable features may be removed by requiring that where one agent may fail to satisfy the Court, another may be appointed, and thus obviate the inconvenience of personal attendance of the principal. But its introduction into a Code of Procedure for revenue suits would be attended with pernicious effects. A landholder may have estates in several zillahs, and hundreds of suits proceeding against recusant ryots. In such a case personal attendanae can never be hoped for because it would be a physical impossibility. In other cases, the harassment to the landholder might be great were he to attempt to comply with every requisition for his personal attendance.

29. Section 49 proposes that, in a suit for recovery of rent, the appointment of an agent by either party to conduct the case shall not excuse the personal attendance of the party so doing in cases where the Collector will consider it indispensable. The power thus vested in the Collector, your petitioners apprehend, is liable to great abuse. Under the present system of Collector-Magistrate, a Collector is liable to acquire, in his magisterial capacity, a prejudice against a zemindar, which may not unlikely influence his civil proceedings against such person. He may, under colour of this power, compel the personal attendance of the zemindar, though the latter may be residing at an inconveniently distant

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place, and his presence at the court may not be of material consequence to the case under investigation. The ryot may also be mischievously inclined, and with a view to worry his landlord, may call for his personal attendance; and the Collector, thus vested with absolute power, may be the instrument of causing unnecessary trouble to the zemindar, by acceding to the wishes of his tenant. But with *perdanusheen* women the hardship will be still greater; and your petitioners submit that, if the power in question be at all vested in the Collector, the inexpediency of which is so glaringly obvious, the circumstances should be distinctly defined in which its exercise may be legal. The same section disallows the award of fees for employing an agent to conduct a suit as part of costs. Your petitioners fail to perceive the justice of this rule. It will be allowed that the zemindar is not required to entertain an agent, unless the ryot defaults; nor the ryot to do so, unless the zemindar gives the cause. It is therefore unjust to both the parties to refuse them as part of costs what they expended from no cause but an urgent necessity.

30. The disallowance of interest to a plaintiff, as ruled in section 60, will be just and proper if the deposit is immediately handed to the plaintiff and not detained as at present until the termination of the suit.

31. Your petitioners beg leave again to observe that the pergunnah rate, which is mentioned in section 61, is a deception in terms. Indeed, there is no uniform rate ruling a whole pergunnah, and the rates may vary every 200 yards, as remarked in reference to section 3 at the outset. Section 61 limits the period of pottahs in permanently-settled provinces to ten years. Considering that the value of land is rapidly increasing, and that the rate of tenancy is constantly changing, especially with the increased demand for the produce of the country, and the progressive development of the resources of the soil, your petitioners are of opinion that a shorter period should be allowed for the duration of such pottahs.

32. The Legislature, in 1799, by enacting clause 7, section 15, Regulation VII, of that year, gave the zemindar the power of cancelling the leases of those lands in which the holder had no transferable right in the soil if the rent of the same were withheld till the end of the year. And this wholesome provision has operated most beneficially towards the punctual realization of rent. The exercise of this power, however, is now made, by section 63 of the draft Act under comment, conditional on the non-payment of the arrear on or before the execution of the decree. The ryot is thus furnished with a loop-hole for escape from the due punishment of the offence, which, to all intents and purposes, is wilful, while the zemindar is deprived of his obvious and legal right of cancelling the lease when the rent is unpaid. But, taking into consideration the stringency of the rules that are brought by Government, for the protection of its interests, to bear upon the case of a defaulting zemindar, allowing him not the grace or the indulgence of twenty-four hours for the payment of his dues, your Honourable Council will see, as your petitioners hope, that by the provision of this section equity would be grossly outraged as regards the interests and rights of the landholder.

33. It is proposed in section 77 that, after the lapse of three years from the date of judgment, no process of execution shall be allowed. The principle which execution of judgment, as your Honourable Council are aware, has in view, is the satisfaction of the creditor's demands, which have been adjudged due by a court of law; and it is the duty of the Legislature to assist the administrators of law in the enforcement of their orders to the benefit of the decree-holder. But the provision under comment is incompatible with the principle and end in view. There may exist strong grounds why the execution of decree could not be carried out within the limited period of three years. Where the execution against the person is intended, the absence of the party may oblige the decree-holder to stay the execution until the debtor is discovered. The debtor's present want of means to satisfy the claim may also be a cause of postponing the execution, unless the creditor is compelled, by the stringency of such provisions as the one under notice, to lay out more money in the execution of the decree, with the immediate prospect of disappointment. Your petitioners therefore submit that the period should be extended to six years.

34. With regard to section 78, your petitioners are of opinion that the imprisonment of debtors under its provisions should not be governed by the

amount of the claim, but by other circumstances, the determination of which should be left to the discretion of the Judge or the presiding authority. On a person of a certain social position and delicate habits of life imprisonment for one month may have a greater effect than imprisonment for one year on another not of such habits. The period of six months, as the maximum of imprisonment, your petitioners do not consider sufficient. Your Honourable Council may be aware that this sort of punishment is the only efficacious remedy against default, which not often is merely wilful, or the offspring of a mischievous intention. It is specially effective against tenants whose property does not extend beyond a number of cows and bullocks, and a few utensils which can be easily placed with their relatives at distant places, or otherwise made away with so as to leave no trace for detection, and whose only terror in life is confinement in jail. Your petitioners believe that the limitation of the maximum period to one year will have all the wholesome effects of punishment by imprisonment.

35. If the claimant fail to establish the right, the Collector shall, section 87 proposes, only award against the claimant the damage which he has caused by such false claim to the judgment-creditor. Your petitioners are of opinion that, where such claims appear to be palpably false and vexatious, provision should be made, prescribing for such claimants punishment as for vexatious and litigious suits. Such a rule, your petitioners hope, will have the most wholesome effect in deterring persons from preferring fraudulent claims, with a view to worry and harass the judgment-creditor.

36. By section 99 the period of one year only is allowed for the exchange of pottah and kabooliut, and where this arrangement may not be carried out within the specified time, there can be no distraint of crops. On this point your petitioners have already expressed their opinion.

37. Section 101 prescribes, in the first place, that standing crops, &c., when attached, shall be reaped and stored by the cultivator, or, if he neglect to do so, by the distrainer. Your petitioners believe, that it will conduce to the ends of justice and to the security of the zemindar, if it be ruled that the distrained crops shall be gathered or stored by the cultivator, with the consent and under the direction of the distrainer.

38. It is proposed in section 105, that persons empowered to distrain must give written authority to their servants to do so. The usage of the country in this respect is to depute *paiks* to conduct the distress, under the authority of the naib or the gomashtah as the representative of the landholder. This is sufficient to fix the liability of illegal and unwarranted distraint upon the zemindar. Under the circumstances, your petitioners are of opinion that it will be consonant to the strictness of law in this matter, if the paiks be furnished with a written authority by the manager of the estate, except where the manager levies the distress himself.

39. Your petitioners consider the provision for the postponement of the sale of distrained property, as contained in section 104, prejudicial to the interests of the distrainer. It must be admitted that, in section 114, every precautionary measure has been provided, to ensure a fair price for such property. To give the distraining officer, therefore, the discretion of postponing the sale, or the owner of the property, or any other person acting on his behalf, the liberty to stay it is inconsistent and liable to abuse. It is extremely probable that the one may abuse his power and the other throw every obstacle in the way of the distraint, merely to harass the zemindar and delay the recovery of rent adjudged due. On the other hand, your petitioners are of opinion that it is in accordance with the principles of equity, that, if any postponement of sale is at all to be allowed, it should be at the desire and application of the distrainer. The existing law, by authorizing postponement of sale when the price offered was not equal to appraised value, met this requirement.

40. Section 119 gives a new power to the Sale Ameens, which, considering the character of the class from which these officers are usually selected, will be liable to considerable abuse. But your petitioners do not see the necessity or utility of conferring so momentous a power on Civil Court Ameens. The provision could not have originated, your petitioners believe, from an impression that the defaulting ryot, whose property is put up to sale for arrear, would suffer from an omission on the part of the zemindar to apprise him of the circumstances beforehand. Such a contingency section 109 has strongly

Memorial of the British Indian Association (dated the 14th February 1859)

guarded against. The Civil Court Ameen is enjoined by that section to issue a notice to the defaulter on receipt of application for the sale of distrained goods requiring him either to pay the money due, or institute a suit to contest the demand within a fortnight. It is thus clear that a defaulting ryot cannot suffer through ignorance, even in the case of the distrainer's failing to issue the prescribed notice before distraint; and the expediency of investing the Sale Ameen with a new power, liable to so great abuse, is very questionable.

41. *Section 130.*—In cases of resistance of the process of distraint duly made under the proposed Act, the offence of persons, not owners of the property attached, has been more charitably viewed by your Honourable Council than it deserves. Your petitioners are of opinion that persons, who have not the excuse or motives of the owners of the distrained property to justify their resistance, but act, as may be fairly imagined, from vindictive and unfair intentions, should be deemed more culpable in the eye of the law than the owners, and should therefore be punished more rigorously than is proposed in the section under notice.

42. The powers to be vested by this Bill in Collectors and Deputy Collectors are the same and of equal importance; and appeals from the orders of both these authorities should, to be consistent, be allowed to the Commissioners of Revenue direct. The good administration of law entirely depends on the persons who administer it; and where age, which generally implies wisdom, is combined with ability in the Judges, the fullest confidence can be placed in such a system of administration of justice. The Commissioners of Revenue, as a rule, are persons of long standing in the service, and are entitled to the confidence due to the experience of years. If, therefore, appeals against orders of Deputy Collectors are allowed to Commissioners of Revenue, and not to Collectors, as provided in sections 139 and 140, it will conduce to the better administration of justice and the satisfaction of the community.

43. Section 143 is involved in considerable obscurity, and liable to misconstruction. The Collector may mistake its terms as giving power of appeal to him against every decision of the Deputy Collector, or may so construe the latter part of the section under notice as to reject all applications against such decisions, disallowing them as not coming within his cognizance. Your petitioners, therefore, respectfully submit that the cases in which appeals to Collectors against the orders of Deputy Collectors will lie, should be so defined as not to admit of misconstruction.

Your petitioners have thus ventured to direct the attention of your Honourable Council to such parts of the Bill as appeared to them objectionable. The Bill aims at supplying a most important *desideratum, viz.*, the codification and simplification of the existing laws relating to landlord and tenant, whether as regards the realization of rents or the assertion of their respective rights in the speediest and the least expensive manner. But like all attempts at codification where existing rights are to be respected, the present is not unattended, with difficulties which your petitioners have sufficient confidence in the wisdom of your Honourable Council to hope will be met in a fair spirit of equity and with a just regard to the vested rights of the parties concerned.

And your petitioners, as in duty bound, will ever pray.

APPENDIX

CONTAINING EXTRACTS REFERRED TO IN THE PETITION.

Extracts from the Board's letter dated the 13th March 1838.

Extracts from the letter of the Board of Revenue to the Government of Bengal, dated the 13th March 1838.

I am directed by the Sudder Board of Revenue to acknowledge your predecessor's letter of 6th July 1837, No. 926.

2. The important subject to which your letter relates has received the Board's most careful attention, and they are now enabled, after much deliberation,

to lay before the Right Honourable the Governor of Bengal a draft of a legislative enactment for the realization of land revenue by sales.

Extracts from the Board's letter dated the 13th March 1838.

* * * * * * *

95. The Board have already stated that considerable confusion and difficulty is occasioned by the obscurity of the laws regarding the rights acquired by a purchaser at auction-sale, and the consequences to the under-tenants, or, at least, by the difference of construction which has obtained in respect to those laws. The proposed draft on this head goes chiefly to simplify and explain the intent and meaning of the present law.

Rights acquired by a purchaser, and consequences on under-tenures.

96. But as the Board's construction of the existing law is opposed in some important particulars to that frequently maintained, it is proper to show as concisely as possible the grounds on which it is founded.

97. The first enactment on the subject is the following in Regulation XLIV, 1793:—

"*Section 5.*—Whenever the whole or a portion of the lands of any zemindar, independent talukdar, or other actual proprietor of land, shall be disposed of at public sale for the discharge of arrears of the public assessments which such proprietor shall have contracted with dependent talukdars, whose taluks may be situated in the lands sold, as also all leases to under-farmers, and pottahs to ryots, for the cultivation of the whole or any part of such lands (with the exception of the engagements, pottahs and leases, specified in sections 7 and 8) shall stand cancelled from the day of sale, and the purchaser or purchasers of the lands shall be at liberty to collect from such dependent talukdars, and from the ryots or cultivators of the lands let in farm, and the lands not farmed, whatever, the former proprietor would have been entitled to demand according to the established usages and rates of the pergunnah or district in which such lands may be situated, had the engagements so cancelled never existed.

"6. Nothing contained in this Regulation shall be constructed to prohibit any zemindar, independent talukdar, or other actual proprietor of land, selling, giving, or otherwise disposing of any part of his lands as a dependent taluk.

"7. Nor to authorize the assessment of any increase upon the lands of such dependent talukdars as were exempted from any increase of assessment at the forming of the decennial settlement, in virtue of the prohibition contained in clause I, section 51, Regulation VIII, 1793. The revenue payable by such dependent talukdars is declared fixed for ever, and their lands are, accordingly, to be rated at such fixed assessment in all 'divisions of the estate in which their taluks are included."

98. Upon this it is important to remark, that nothing like ousting or disposing of the "*talukdars and ryots*" was contemplated. Their *engagements* were cancelled, and the zemindar was at liberty to collect *from them* whatever the former proprietor would have been entitled to collect. This obviously implies that the "talukdars and ryots" were to remain in possession,—an inference which is, if necessary, strengthened by the difference observable in the mode of treating "under-farmers," of whose tenures it is expressly said that the new zemindar might collect, not from the under-farmers, which would be the analogous mode of writing with that used for talukdars, but "from the ryots and cultivators of the lands let in farm," *i.e., farmers* were to be ejected. Talukdars and ryots were to be *held in possession*, subject to enhancement of rent.

99. But to this enhancement there was an exception* in favour of "such dependent talukdars as were exempted from any increase of assessment at the forming of the decennial settlement, in virtue of section 51, Regulation VIII, 1793." It is remarkable that there is no express exemption in favour of istemrardars as mentioned in sections 19 and 49, Regulation VIII, 1793. The spirit, however, of the two laws taken together with clause V, section 29, Regulation VII, 1799, clearly excepts such istemrardars from enhancement after a sale.

* Section 7.

100. Thus, by the expression and spirit of the laws of 1793, a sale for arrears of revenue had the following effect upon the different sorts of tenures below enumerated:—

1st.—*Istemrardars* were left unmolested, liable to no increase, and secure from dispossession.

2ndly.—*Taluks existing at the settlement, which were not proved at that time, or subsequently, to be liable to increase, as provided in section 51, Regulation VIII.*, 1793, were left as they stood before

Extracts from the Board's letter dated the 13th March 1838

the sale, *i.e.*, the proprietors were not liable to dispossession, and subject to no enhancement, except upon regular suit by the auction-purchaser, to *prove* his title to enhance their rents.

3rdly.—*Taluks existing at the decennial settlement, which had been proved liable to increase in the manner laid down in section 51, Regulation VIII,* 1793, were liable to enhancement by the auction-purchaser, but not to dispossession of the talukdar.

4thly.—*Taluks created since the decennial settlement* were liable to enhancement by the auction-purchaser, but *not* to dispossession of the talukdar. They were, in fact, precisely in the same predicament with the third class.

5thly.—*Farmers holding under leases made since the decennial settlement* were liable to immediate dispossession.

6thly.—*Ryots and cultivators of the soil holding with or without engagements* were liable to enhancement, but not to dispossession.

7thly.—*Holders of leases for a term of years, or in perpetuity, granted for the erection of dwelling-houses, or buildings for manufactures, or gardens, or offices, for such buildings,** were liable neither to enhancement nor dispossession.

* Section 8, Regulation XLIV, 1793

101. To this exposition, which appears to the Board obvious and indisputable, they solicit particular attention, because, as will be hereafter shown, it has been not only disputed, but absolutely contradicted and nullified by very high authority.

102. In 1798 a new power was given to purchasers with regard to the above tenures (except the first, second, and seventh classes), and this is a very important one in the following terms:—

"But in cases of public sales for arrears of the public revenue, the purchaser may, without any previous application to the Dewanny Adawlut, eject any of the under-renters whose leases are annulled by section 5, Regulation XLIV, 1793, *and who may decline the renewal of them* on such terms as the purchaser by the Regulation, and by section 7, Regulation IV, 1794,* is authorized to require from them."

* *Section* 7. "The rules in the preceding section are to be considered applicable, not only to the pottahs which the ryots are entitled to demand in the first instance, under Regulation VIII, 1793, but also to the renewal of pottahs, which may expire or become cancelled under Regulation XLIV, 1793; and to remove all doubt regarding the rates at which the ryots shall be entitled to have such pottahs renewed, it is declared that no proprietor or farmer of land, or any other person, shall require ryots whose pottahs may expire, or become cancelled, under the last-mentioned Regulation, to take out new pottahs at higher rates than the established rates of the pergunnah for lands of the same quality and description, but that ryots shall be entitled to have such pottahs renewed at the established rates, upon making application for that purpose to the person by whom their pottahs are to be granted, in the same manner as they are entitled to demand pottahs in the first instance by Regulation VIII, 1793."

103. Up to this time there was no clear rule according to which the purchaser at an auction sale might proceed to demand enhanced rent from tenants liable to enhancement. Accordingly, by section 8, Regulation V, 1812, it was provided that a "deduction should be made from the gross rent at the rate of 10 per cent. for the talukdar's profit or income, over and above a reasonable allowance for the charges of collection according to the extent of the taluk."

104. It was also laid down that the enhanced demand could only be made on or before the month of Jeth, and in a prescribed and formal manner.

105. This law in no degree interfered with, although it regulated the rights previously possessed: a purchaser might enhance the rents of the under-tenants in classes 3, 4, and 6 (paragraph 100), and eject them under clause V, section 29, Regulation VII, 1799, if they refused to agree to his terms; but those terms were henceforth to be according to a fixed rule, and the demand was to take place at a given time of the year.*

* An exception was made as to holders of collusive tenures, who, on proof to that effect in a summary suit, might be ejected at any time of the year, section 4, Regulation V, 1812.

106. But when Regulation VIII, 1819, was enacted, a very different view was taken of the laws above quoted, and the preamble to that Regulation shows clearly that its framers supposed the law to give a purchaser a right of immediate ejectment, instead of a right conditional upon acceptance or non-acceptance of terms formally offered, which, it has been explained, was all that

the Regulations had hitherto bestowed upon an auction-purchaser; and section 2 of Regulation VIII, 1819, expressly quotes section 5, Regulation XLIV, 1793, as an authority for "cancelling of *tenures*" after a sale, though, as already shown, Regulation XLIV, 1793, only cancelled *engagements*, and by no means warranted the cancelling of *tenures*, which amounts, in fact, to dispossession and ejectment.

107. The declaration, however, of the old law, which Regulation VIII, 1819, professed to contain, seems to have been at a later period, and in a much more important and effectual manner taken as the correct one, for the next Regulation on the subject (Regulation XI, 1822) repeats (and almost in the same words) the questionable exposition alluded to, and even extends and amplifies its effects.

108. It was now declared* that "the act of sale transfers to the purchaser all the property and privileges which the engaging party possessed and exercised at the time of settlement free from any accidents or incumbrances that may subsequently have been imposed, or have supervened thereupon, &c. &c.;" and again, "In pursuance of the *principle* of holding the estate of a defaulter answerable for the revenue in the state in which it stood at the time the settlement was concluded, all tenures which may have originated with the defaulter, or his predecessors, being representatives or assignees of the original engager, as well as all tenures, &c. &c., shall be liable to be avoided and *annulled* by the purchaser at the sale, subject only to such conditions of renewal as attached to the tenure at the time of settlement aforesaid."

* *Section 29, Regulation II, 1822.*

Section 30.—In pursuance of the principle of holding the estate of a defaulter answerable for the punctual realization of the Government revenue in the state in which it stood at which time the settlement was concluded (at which time, by the dissolution of its previous engagements, Government must be considered to resume all rights possessed on the acquisition of the country, save where otherwise specially provided), all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like settled or credited by the first engager or his representatives, subsequently to the settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, shall be liable to be avoided and annulled by the purchaser of the estate or mehal, at a sale for arrears due on account of it, subject only to such conditions of renewal as attached to the tenure at the time of settlement aforesaid, saving always and except *bonâ-fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect.

109. This power of *avoiding and annulling* under-tenures is subsequently said to be "indispensable for the security of the public revenue," and to "*have been* always and uniformly acted upon as a fundamental principle of the revenue system of this Presidency."

110. The fact, in short, of the full power given by a sale to auction-purchasers to *annual tenures* (not leases only) and eject tenants, is taken completely for granted in Regulation XI, 1822, so much so, as hardly needing to be *enacted*, but rather announced as an undeniable axiom, and it is remarkable as an additional proof of the construction now given to the old laws, that the only law which *did* give the power, under certain conditions, of ejecting tenants (clause V, section 29, Regulation VII, 1799) was repealed by Regulation XI, 1822, and not *re-enacted*.

111. There is, however, one point in which Regulation XI, 1822, adheres closely to the old laws as respects the position of under-tenures. But as this adherence goes to separate the cases of two kinds of tenures, which, under the laws of the perpetual settlement, were similarly situated, and as, moreover, it goes to limit the powers of auction-purchasers, though the whole object of Regulation XI, 1822, was to increase them, it may be very reasonably presumed to have been an oversight. It has been stated that, under the old laws, dependent taluks, which existed before the perpetual settlement, not being those protected by section 7, Regulation XLIV, 1793, and dependent taluks created subsequently to the settlement, were placed in the same predicament, *i.e.*, they were liable to enhancement of rent, but not to ejectment, unless the enhanced rent were withheld. Now section 30, Regulation XI, 1822, gives the purchaser the power of ejecting the tenants whose tenures may have originated with the original engager, or his representatives, *i.e.*, taluks created since the settlement, but provides at the same time that the purchaser shall succeed to the rights of the *original engager at the time of settlement*, and that annulment of tenures which the original engager under the terms of his settlement might set aside, or alter, shall be "*subject to such conditions of renewal as attached to those tenures at the time of settlement aforesaid.*" A condition

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which clearly entitles to renewal the holder of a dependent talúk existing at the time of settlement, not protected from enhancement by section 7, Regulation XLIV, 1793, as above stated, and belonging to class 3, paragraph 100, that is to say, Regulation XXII found the two descriptions of tenure (classes 3 and 4) in one and the same position, it left them very differently situated. Both were liable, previous to Regulation XI, 1822, to enhancement only; after Regulation XI, 1822, the one was in the same position, but for the other was added liability to ejectment.

112. This must, the Board imagine, have been an oversight.

113. So far Regulation XI, 1822, though, as the Board think, erroneously worded as to the meaning and intent of former Regulations, was at any rate clear enough in its own purport. It might mistake the object of the old laws, but could hardly be itself mistaken by others.

114. Another section,* however, was so worded as to cast a doubt upon all that had preceded, and to raise up difficulties and contradictions, which have existed more or less ever since. "The above rules," it was provided, "shall not be construed to entitle the purchasers of land at public sales to disturb the possession of any village zemindar, puttidar, *mofussil talukdar*, or other persons having an hereditary transferable property in the land, or in the rents thereof, not being one of the proprietor's party to the engagements of settlement, or his representative."

* Section 32.

115. This section certainly bears out in a *considerable* degree the construction given to it in many instances—that by its operation dependent holders of any description, who may have purchased a proprietary right in their tenures, or the rents thereof, are secured from all the effects of a sale for arrears of revenue. And as the under-tenants, almost down to the very cultivators of the soil, do in many parts of the Lower Provinces purchase a hereditary right in their tenures, the consequence of this section, so construed, has been a varying and contradictory execution of the law, an uncertainty on all hands as to the position of under-tenants, difficulty and imperfection in giving and obtaining possession of estates purchased at public sales for arrears of revenue, and generally distrust, misunderstanding, litigation, and discontent.

116. Indeed, it may be unreservedly asserted that, though the Regulation in question, by its 31st section, gives apparently much greater power to auction-purchasers than they ever possessed before, yet, in consequence of the contradiction implied in section 32, the real and practical effect of this law has been to narrow the benefits of a purchase, and impede the collection of the revenue.

117. The construction of this section, which has been stated to be the usual one, has been thus remarked on by the Board on a former occasion—

118. "It has on some recent occasions been held that dependent talukdars, created since the settlement, came within the description of persons protected by the above proviso.

119. "The Board, however, entertain no doubt whatever that this opinion is incorrect.

120. "It will be sufficient to attend carefully to the wording of the section to be satisfied that the persons designed to be protected are parties possessing a full and fixed right of what is termed in the language of our Regulations 'property' in the land, or its rents, that is—parties possessing such a right as that it is possible that they might be 'proprietors, parties to the engagement of settlement'—while it need not be stated that it is very certain that dependent talukdars never could be parties to an engagement of settlement, and it thence follows that they are not of the class of persons to whom the section was intended to apply.

121. "The interest of dependent talukdars, as before mentioned in 2nd paragraph of this letter, has been defined by section 7, Regulation VIII, 1793, to be only a 'leasehold' and not a proprietary 'interest.'

122. "The section in question of the Regulation of 1822 points evidently to the case of persons having fixed properties in mehals, though they may not in virtue of that right have engaged with Government for the revenue,—such as the village zemindars, puttidars, &c., of the Upper Provinces. The meaning will be more plainly seen on comparing section 32 with section 16 of the Regulation, where the same class of persons are spoken of as '*proprietors*,' '*puttidars*,' *village zemindars*, or the like, who at the time of the settlement held distinct properties,* though paying their revenue through the recorded malguzar."

Note.—Section 32, Regulation XI, 1822, would, however, protect *talukdars, the actual proprietors* of the lands composing their taluks, "who did not apply for separation within the time limited by section 14, Regulation I. 1801." That section declares that such talukdars so nelecting to apply should also lose their right to separation, though, "*in other respects*," the rights of the talukdars were not to be in any degree affected.

123. This construction of section 32 is entirely consistent with the manner in which the mention of the proviso alluded to is introduced in it. There is nowhere in the previous sections a hint of there being any exception to, or limitations of, the general and indispensable principle declared in them, to be found in this section. On the contrary, that general principle is stated in terms the most express and unqualified, and, as has been remarked, as if it were an absolute and necessary consequence of the act of sale for arrears. And section 32 is added, not as *exceptive*, but as *precautionary*, to prevent the *misapplication* of the powers given by the preceding sections to a purchaser over tenures created since the settlement, to tenures of property, which, though situated within the estate sold, are not derivative either from the party who originally entered into engagements at the time of settlement, or from any of his successors, down to the defaulting engager, and are, therefore, not involved in the Act of sale of the defaulter's estate or interest. Extracts from the Board's letter dated the 13th March 1838

124. The Board need not pursue the argument further upon the wording of the law, or dwell, in addition to the considerations already stated, upon the great improbability, to say the least of it, that it could be meant by section 32 to nullify, in regard to one great class of dependent tenures, the rule which is broadly laid down in section 30 in respect to *all* dependent tenures created since the settlement, or to render nugatory and useless the special power of protecting such dependent tenures, which is conferred by section 31, in so careful and guarded a manner, on the Government alone. They think, however, that it may be satisfactory to state here, in the words of the framer of the Regulation under consideration, the views by which he was guided in drawing this part of it. The following is an extract from a note recorded on the proceedings of Government, under date the 1st November 1822, by Mr. Secretary Mackenzie, in submitting for approval the final draft of Regulation XI, 1822, to which the Board have been permitted to refer:—

125. "It may, however, be proper to observe that this Regulation contains a very important concession to the inferior proprietary classes, and one which the auction-purchasers will be apt, though erroneously, to consider as an encroachment on the rights acquired by them, and that is the *declaration* that their property is limited to what may have been that of the *former engager* at the *time* of *settlement*. This, doubtless, is the equity of the case, and is likewise the spirit of the former rules on the subject; but as the point was never declared heretofore with sufficient precision, the auction-purchasers have been encouraged to assert that the *entire* and absolute property became theirs by purchase."

126. "Thus it will be seen that the anxiety was to preclude *more* from being held to be conveyed to a purchaser at a sale than the rights of the first engager at the settlement, but that it was not sought to deprive the purchaser, to any extent, of any of those rights."

SECTION XXXVI.

Landholders' Society.

Suggestions on the Draft Sale Act of 1841.	Observations by the President in Council.
The Landholders' Society believing that the tenures alluded to in the 1st and 2nd clauses of section 36 are those which are protected by Regulation VIII of 1793, has no remarks to submit; but in regard to the tenures referred to in the third clause, *viz.*, lands held by khoodkasht or kudeemi ryots, having the rights of occupancy at fixed rates, the Society directs us to submit the following observations for the consideration of His Honour in Council	
The Society concludes that the right of that class of ryots here intended to be protected is that which is named in clause 2, section 60, Regulation VIII of 1793. With a full confidence in the laudable motives of the Supreme Government to protect, by the present Act, the rights of all classes of landholders and under-tenants, as well as to define more clearly the immunities belonging to their respective tenants, we beg respectfully to submit, that it would be considered a boon by the landholders and their ryots, if the particular description of tenures here alluded to, under the designation of "khoodkasht or kudeemi," were to be clearly defined, and the nature of the rights thereto appertaining fully explained; such a declaratory provision would, in a great measure, remove the cause of that unnecessary litigation into which people now so frequently enter for want of a proper knowledge of their respective rights and privileges as secured by law.	This suggestion is well worthy of consideration:
It is already known to the Government that the tenure khoodkasht ryots means, as explained in the 32nd section of Regulation XI of 1822, khoodkasht kudeemi ryots, or residents,	"But it may be remarked that, with one addition, the classes of tenures saved by this section are the same as those saved under the present laws; and the descriptions of them are the same in substance here as in the present law. It is not the intention to create any rights not before in existence. All ryots who had, at the settlement, hereditary rights, and all those who succeed them, are intended to be maintained after a sale with their right in tact. This law protects no other ryots. With other ryots it is intended that an auction-purchaser shall be at liberty to do whatever the old proprietor could have done, supposing him to have entered into no engagements with them. But it is not intended to give an auction-

Extracts from the Board's letter dated the 13th March 1838

Suggestions on the Draft Sale Act of 1841.	Observations by the President in Council.
and hereditary cultivators having a respective right of occupancy, and that as such they cannot be ejected from their possession so long as they pay their stipulated rent at a fixed rate according to the pergunnah nerick. The fundamental Regulation, *viz.*, VIII of 1793, section 6, clause 2, is intended to secure the immunities of those khoodkasht ryots as were in possession of their lands prior to the period of the decennial settlement in holding their lands at the rate of the *nerickbundy* of the pergunnah, and neither the wording nor spirit of the Regulations can be supposed to apply prospectively to all resident cultivators generally, who have derived their rights from zemindars, subsequently to the permanent settlement. The right of the latter must be annihilated with the right of the zemindar by a revenue sale, as provided in section V, Regulation XLIV of 1793, with the exception noted in sections VII and VIII of that Regulation. Thus it will be seen that the resident ryots may be divided into two classes, *viz.*, those who are holding possession from a period anterior to the permanent settlement, and those who are come to reside on the estates subsequently to it. The Landholders' Society presumes that the protection afforded by the clause in question is intended to apply only to the former of these two classes of resident cultivators, and that the latter are to be considered as mere tenants-at-will. If the Supreme Government thus construes the law, which the Society doubt not it will, respecting the distinction of the immunities of these two classes of ryots, we are requested to solicit that a definite section be introduced in the Act to remove existing doubts on this question, which doubts may often lead to unnecessary litigation and contradictory decisions, particularly in the Courts of Sudder Ameens and Moonsifs, where such questions, owing to the amount in dispute, are, in the majority of cases, brought to issue, and whose decisions under the existing laws cannot have the benefit of correction by an appeal to the Sudder Dewanny Adawlut, the highest judicial tribunal in the country.	purchaser power to do more than this. An auction-purchaser, under the present law retained in this draft, obtains no power which the old proprietor never had. If the general laws are too vague or obscure on this important subject, they may be amended by a separate enactment, perhaps with better effect than by a clause of the Sale Law."

Extract, Bengal Revenue Consultations, 8th March 1827. Minute by Mr. W. Leycester, Senior Judge of the Sudder Dewany Adawlut.

Extract, Bengal Revenue Consultations, 8th March 1827.

No. 5.

I AM of opinion that this draft of a Regulation, if passed into a law, will not be likely to produce any beneficial practicable result; and though it may be admitted that our system has always professed regard for the interests of the actual cultivators of the soil, I do not think it ever contemplated the placing of that class of people into the situation, and vesting them with the privileges, of dependent talukdars.

Express provision was made for the security of the rights of the latter, and for maintaining them in the possession of their hereditary tenures as long as they paid a fixed and ascertained annual revenue, while for the former all that was said, and the whole of which has been a dead-letter from the first enactment up to the present day, is contained in the declaration that they were entitled to a renewal of their leases agreeable to the rates of the pergunnah, that is, with reference to seven-eighths of the country, entitled to a renewal of leases that never existed, and at rates that never were known.

The Regulation, too, would, I think, generate extravagant pretensions which never would be realised, would confuse and perplex every existing notion of the relative rights of the landholder and his tenants, and either be nugatory in its effects or overwhelm the public functionaries with loads of work which could not be got through for centuries; at the same time, too, nothing new is enacted, nothing new is even professed. It might perhaps be supposed innocent on that account. But it is the putting groundless notions and unfounded pretensions into people's heads that would produce the evil, the only assurance against which would be that the Regulation would decorate the shelves of our public offices, and be as if it were not to the people. That every cultivator resident in the village has, by the customs of the country, a right to transmit his tenure to his heirs from generation to generation at any known rate of adjustment of rent payable by him, is a doctrine I should be slow to believe; indeed, this is not even professed. It is only said that those who have such right shall be supported in it. Is there any doubt about this? Was it

ever expressed by any public functionary either in words or in effect? True, you have such right, but you shall not be supported in it.

In many parts of the country the resident cultivators are the actual slaves of the landholders, and liable to be mortgaged, bartered, or let to hire, the same as his oxen and his goats, at his will and pleasure. Now, though no very staunch advocate for the varied and multiplied iniquities of slavery, I should not be at all disposed to reverse matters, to make the slaves masters and the lords slaves. But through what refinement of argument, what extension of intellect, are these slaves and other resident cultivators not holding under hereditary tenures, to discover that such is their lot, that they are only servants at will, entitled if they got a lease to a renewal of it? And it might fairly be asked, if a non-resident ryot, cultivating twenty beegahs, erect a hut thereon, and move his family thereto, would he by that act acquire an hereditary tenure, and rightfully oust the landholder of his previous privileges?

It is clear, however, that the existence of resident cultivators not possessing the right of transmitting their tenures to posterity is contemplated, otherwise how easy to enact the same, instead of leaving each individual case, that is, many millions, to be decided by a court of justice. But if let into false notions of their rights and privileges, it might not be so very easy a matter to correct their mistakes.

I cannot be persuaded that the Legislature ever contemplated putting the ryots, who cultivate the lands, say, in a dependent taluk, on the same footing with the dependent talukdar, as the latter bore towards his superior, or the common tenantry of this country on the same footing with the zemindars, as the latter stood in with regard to the Government.

Such hereditary rights existing, it might be supposed that instances might be adduced of their having been sold in liquidation of arrears of rent, or in payment of decrees or by private transfer; or are these rights so invaluable that, being worth nothing, nobody will give nothing for them?

It seems to me very inconsistent with the proprietary right and title vested by law in the zemindars: I do not mean that there should be a secondary title, for that has always been recognised in the dependent talukdars; but that all the resident cultivators should hold under heritable tenures; that if the zemindar wish to build a house, dig a tank, or plant an orchard, the previous cultivators thereof should have any claim to step in and forbid the act; that the ryot should have the title to cultivate the land with coarse rice, in supersession of the will of the landholder to have it cultivated with indigo.

With regard to pergunnah rates, too, it cannot be contemplated that they should be immutable; that when Calcutta has travelled down to Diamond Harbour, that the rate of land there should then continue the same as at present.

The fact is, that the zemindars are not at all prone to eject their ryots. We have heard clamours on the subject of extensive ejectments of the peasantry in the northern part of our own country, but never that I know of in India.

The evil to be remedied here is arbitrary and illegal exactions from the ryot by the zemindars, against which this proposed Regulation presents no remedy more effectual than existed before. No remedy can be at all effectual that refers them to our public functionaries, even though their present number were to be multiplied tenfold: we have to do with a people possessed of two opposite qualities, which have unluckily no tendency to neutralise each other,—a people eminently qualified to cheat and be cheated, to suffer and to practise extortion, before whom honesty and dishonesty are held in equal honour. Written engagements alone can bind these people—indeed, speaking generally, any people; in such transactions, a rule declaring no balance recoverable from a tenant by suit or distraint, unless written engagements are exchanged, and a jumma-wasil-baki account setting forth the arrears, be produced at the time, would, I am satisfied, do much good. I would not care how the engagement was worded, whether in one consolidated sum or in a hundred items, or cesses, or whatever they may be called, so long as it be clear what the parties have agreed to. It may be objected that the ryots would evade execution of their part of the agreement in order to cheat the zemindars. This argument ends that, while amply acknowledging that the hundred ryots are imposed on by the one zemindar, the interests of that one are to be protected, and that of the hundred to be sacrificed. It would not, however, be very difficult to secure

Extract, Bengal Revenue Consultations, 8th March 1827. Minute by Mr. W. Leycester, Senior Judge of the Sudder Dewany Adawlut.

the one without sacrificing the many, whether by making the tenant liable to ejectment on such failure, or by rendering the tender of a pottah in due form and on fair terms equivalent to the interchange of agreements. The fact of the tender and the fairness of the terms to be judged of by the functionary trying the suit, or by the distraining officer, in the most equitable way they could devise, and that such tendered pottah be deposited immediately on rejection or non-reception by the ryot with the officers who might eventually have to execute a distraint for any balance.

I should be glad to see the zemindars grant their leases for a period of years, but I would not legislate on the subject.

For the above reasons, I am unfavourable to the enactment of the proposed rules into a law.

W. LEYCESTER,
Senior Judge of the Sudder Dewanny Adawlut.

Extract, Bengal Judicial Consultations, 22nd March 1827. Minue by Mr. A. Ross, 6th Judge, Sudder Dewany Adawlut.

Extract Bengal Judicial Consultations, 22nd March 1827.

CIVIL—L. P.—No. 4.

MINUTE OF THE SIXTH JUDGE.

The Court being now informed, by the Resolution of Government, dated the 5th ultimo, that its request to be furnished with the reports of the revenue authorities relative to this draft is not to be complied with, I beg leave to record the following Minute, containing the grounds on which I object to the enactment of the draft.

2. The declaratory clauses of the proposed Regulation appear to me to be superfluous. They contain merely a declaration to the effect, that nothing in the Regulations in force relative to the rights and powers of zemindars and other superior landholders, and to the rights and privileges of dependent talukdars and hereditary ryots or cultivators of the soil, was designed to define, limit, or prejudice the actual rights of any of those classes—a declaration which can hardly be deemed necessary, and which would give no greater security to actual rights than the laws already enacted afford.

3. The enacting clauses of the draft are intended to secure the rights of two classes of ryots, namely, istemrardars or holders of tenures subject to a fixed rent in perpetuity, and khoodkasht and all other permanent or resident ryots who are not istemrardars.

4. The first class, or the istemrardars, are only particularly referred to in the third clause of section 7, and that clause is expressed in the following words :—

" Provided also, that no istemrardar or tenant at a fixed rent who, having held his tenure at a fixed rent for a period more than twelve years, was exempted from any increase of assessment by the rules of the permanent settlement of Bengal, Behar, and Orissa, nor any similar under-tenant who, without any special lease or limited assignment, may have actually and *bonâ fide* possessed his istemrari tenure for the same period and at a fixed and invariable rent, in any of the provinces under the Presidency, shall be liable to enhancement of rent for lands included in the same tenure."

5. The plain meaning of these words is that occupancy by a resident ryot of the land cultivated by him for a period of twelve years, at an invariable rent under an istemrari title, shall be held to be sufficient proof of the tenure being actually istemrari, although no lease or written document be forthcoming in support of the title. But a rule to that effect only would give no greater security to the actual istemrardars to whom it refers, than they already derive from the rules in force as to the limitation of time for the cognizance of claims generally in the civil courts, and on that consideration the clause, if enacted, as it now stands, would probably be construed by the courts as intending to confer an istemrari right upon every resident ryot who had been allowed (although without title) to occupy the lands cultivated by him for twelve years, at a rent which had not varied during that period,—a construction which could not fail to be productive of injustice to the zemindars, by encouraging their ryots to claim rights which they had never actually possessed, and which they had never been considered entitled to.

6. In regard to khoodkasht orders, the enactments proposed exempt the whole class from all process whatever for the enforcement of any to engage for until the enhancement demanded shall be authorized by a decree in court given in a regular suit.

7. I think these enactments are objectionable on the grounds that they would, to the injury of the zemindars and other superior landholders, confer rights upon the ryots never before enjoyed by them, and would tend to establish a state of things which, with a view to the improvement of the country, it is desirable rather to prevent than to promote.

8. It is quite obvious that the zemindars, from the inability of the courts under the existing system of judicature to decide their suits, would be deprived of legal right to enhance the rent of any resident ryot, and that, consequently, all resident ryots, if the proposed enactment afforded them the protection intended, would become istemrari proprietors of the lands occupied by them.

9. That the ryots would be really benefited by such a result, is far from certain. It is indeed most probable and almost certain that their condition would be deteriorated. The small portions of land which they severally cultivate would not be rendered more productive than they now are, and of course they would not support the present number of occupants with more comfort than they now do, or a greater number with the same comfort. The descendants of the existing generation, as their numbers increased, would consequently be reduced to the lowest possible condition, and it would only be when reduced to that condition, and compelled to relinquish for the means of subsistence the unprofitable right conferred upon them, that the bar opposed to the improvement of the lands by the impolitic creation of those rights would be removed.

10. That all resident ryots are entitled, according to the ancient law and custom of the country, to occupy the lands they cultivate, so long as they continue to pay certain established rates of rent, as is assumed in the preamble to the proposed Regulation, is, I think, also questionable : such a right is not claimed, I believe, by mere ryots, whether resident or non-resident, in the Upper Provinces ; and if claimed in the Lower Provinces, it could not, I apprehend, be established by a reference to either the ancient law or the ancient custom of the country. It would be difficult to show when the law referred to was in force ; and if it ever was in force, it would be still more difficult to prove that it intended to confer upon mere cultivators a right to derive any greater advantage from the cultivation of the lands allotted to them than that for which they first undertook to cultivate the allotment ; in other words, a right to share in the increasing value of lands, a right which the privilege of continuing to cultivate the same allotment at fixed rates of rent would really amount to. As to the custom of the country, it has always been opposed to such a privilege, it being notorious that the zemindars and other superior landholders have at all times been in the practice of exacting from their ryots as much as the latter can afford to pay.

11. In point of fact, it is impossible to establish rates of rent which shall always continue equitable, or to enforce adherence to rates arbitrarily fixed, after the lands have become capable of affording higher rates, in consequence of the enhanced value of their produce, without conferring upon the cultivators a right to a progressively increasing share of that value, a right which they never enjoyed and do not pretend to claim, and which would be superior to, and incompatible with, the right of property in the soil, which has been recognized to be vested in the zemindars.

12. On these considerations, I think it would be wrong to authorize the judicial or revenue officers of Government to interfere in the adjustment of the terms of contract to be entered into between the landholders and the cultivators or to impose any other restrictions upon the former than may be necessary to protect the latter from exactions on any account whatever, over and above the specific rent which they may be bound to pay, either by express or implied agreement. That protection would be afforded as fully perhaps as a mere enactment can afford it, by declaring that all arbitrary cesses of every denomination, whether old or new, shall be held to be illegal, and that ryots allowed to cultivate, without having executed written engagements specifying the amount or the rates of rent to be paid by them, shall not be liable to any process to en-

Extract, Bengal Judicial Consultations, 22nd March 1827. Minute by Mr. A. Ross, 6th Judge, Sudder Dewany Adawlut.

force payment of a higher amount, or higher rates of rent, than may have been paid by them for the past year.

13. In endeavouring to promote the welfare of the cultivating classes, it seems to me necessary to keep in mind that the majority of those classes are, and must continue to be, only agricultural labourers. The capitalist, whether zemindar ijaradar, or mahajun, who advances the money required to defray the expenses of cultivation, is the person who receives, and is entitled to receive, all that remains of the produce of the land after deducting the portions which must be allowed to the cultivator for his labour and to the proprietor for rent, and we may be assured that the portion of the cultivator will never be more than must be allowed to him in order to obtain his labour, whether the rent charged on the land he cultivates be high or low.

14. If this is the case, it must be obvious that the comfort and happiness of the mass of the agricultural population can only be promoted by improving their condition as labourers, and that, I apprehend, can only be done by means calculated to raise the demand for their labours, and to produce such a change in their habits and customs as will increase their wants, and make comforts and conveniences not now enjoyed by them be deemed necessaries of life.

15. The measures which would operate most powerfully, and which, indeed, may be said to be necessary to produce this desirable change, are the establishment of a system of judicature capable of securing to all classes, the lowest as well as the highest, the fruits of their industry, the removal of impediments to commerce, both internal and external, and permission to Europeans to settle in the country, with leave to hold lands and to engage in agricultural as well as in manufacturing and commercial speculations.

16. All these measures are, I conceive, necessary, and the last-mentioned no less so than the others. The policy which dictated the law disqualifying Europeans from holding lands may have been advisable before our dominion was firmly established, but to that policy only can it be ascribed that the country has not made that advance in improvement which might have been expected from its long connection with a nation certainly one of the most civilized and most enlightened in the world.

17. That a departure from the policy alluded to, so as to admit of European capital and intelligence being applied to the capabilities of the country, would be productive of a great addition to its wealth and resources, cannot surely be doubted, and I am aware of only one argument which, in the present day, can be urged against it, which is, that it would expose to European encroachment the rights and property of the native population. To this argument the obvious answer is, that a system of judicature capable of protecting the rights and property of the natives from the encroachment of each other, would be capable of protecting them from the encroachment of Europeans. If the laws were justly and efficiently administered, a European could not, were he so inclined, possess himself of the property of a native in any other way than by giving in exchange for it a consideration which the native wished to obtain; and to this mode of encroachment I can imagine no reasonable objection.

18. In the course of time, indeed, Europeans, and the descendants of Europeans, might in this way gradually become the holders of the greatest part of the property of the country, and form the principal portion of the population. But this is the very change which, in my opinion, ought to be desired, and it is only, I conceive, by measures calculated gradually to produce it, that any great amelioration of the condition of the country and of its inhabitants can be effected.

A. ROSS.
Judge.

6th March 1827.

Report of the Select Committee on the Bill, (dated the 26th March 1859.)

Report of the Select Committee on the Bill to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal, presented to the Council on the 26th March 1859.

We, the Select Committee appointed to consider the "Bill to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal," have the honour to make the following report.

From Bengal Government, dated 26th January 1858, and enclosure.
Petition of Protestant Missionaries, dated 9th March 1858.
Petition of landholders and others residing in Dacca. From Bengal Government, dated 27th November 1858, and enclosures.
From Government, North-Western Provinces, dated 23rd December 1858, and enclosures.
Office memorandum, Home Department, dated 31st December 1858, and enclosures
From Board of Revenue, Lower Provinces, dated 1st December 1858, and enclosures.
Petition of British Indian Association, dated 14th February 1859, and enclosures.

The communications noted in the margin have been received on the subject of this Bill.

The principles on which the Bill is founded have met with very general acceptance from the local officers of both the Revenue and Judicial Departments in the Lower Provinces, as well as from the two Boards of Revenue and the Lieutenant-Governor of Bengal; and we have not thought it necessary to recommend any alteration of them.

We have proposed many amendments in the details of the Bill, the principal of which we proceed to notice.

Sections III, III*a*.

We have thought it right to define more particularly the "hereditary ryots" who are to be recognized as having a right to hold lands at fixed rents. The laws in force allude to such a right as belonging to "kudeemi ryots," and these have generally been understood to be ryots who have held at the same rate of rent for a period of 12 years before the permanent settlement. We think that at this late date no one should be required to prove a title antecedent to the permanent settlement; and we have framed the amended section accordingly, adding a clause which will have the effect of placing a ryot who has held at a fixed rent for 20 years substantially in the position of a ryot who has held from the time of the permanent settlement, unless it be shown by the other party that the rent has varied intermediately.

Section III*b*.

The original Bill, following the phraseology of the existing law, declared ryots not holding at fixed rents entitled to pottahs "at pergunnah rates." This expression has been objected to on the ground that there are really no known pergunnah rates. The recognition of a right of occupancy in the ryot implies necessarily some limit to the discretion of the landholder in adjusting the rent of the person possessing such a right. There was a discussion on this subject between the Government of the North-Western Provinces, the Sudder Court and the Board of Revenue in 1850; and it was then apparently admitted that it was the acknowledged right of the ryot to hold at "*customary and fair** rates." We have adopted similar phrases, and in this section and sections XI*c* and XI*d* have endeavoured to lay down rules by which the "*fairness*" of the rates may be ascertained.

* Manwali and wajibi.

Section IV.

The laws in force speak of "*khoodkasht* ryots" as possessing rights of occupancy, and in some places the word *khoodkasht* seems to be considered as synonymous with *resident*.† Resident was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy; and it appears that after much enquiry it was prescribed by an order of the Government of the North-Western Provinces in 1856, as most consistent with the general practice and recognized rights, that a holding of the same land for 12 years should be considered to give a right of occupancy. We have followed this precedent, and altered the section accordingly.

† Regulation LI, 1795, section X, Regulation VIII, 1819, section XI, clause 3, and section XVIII, clause 5.

Sections V, V*a*.

The alterations in these sections follow as a consequence of the former alterations.

Sections XI*a*, XI*b*.

One of the Judges of the Calcutta Court has represented the very great hardship to which old talukdars are subject, in the event of an auction-sale of the estate in which these taluks are situate, from their being liable, under certain circumstances, to an increase of rent, even though they have held at a fixed rent for the period of the permanent settlement. As already stated with respect to the old hereditary ryot, we think that a holding at a fixed rent from the time of the permanent settlement should bar any claim to increase, and we have therefore introduced for the protection of the talukdar provisions similar to those proposed for the ryot under the like circumstances.

Section XIII. It has been remarked by several officers that it is desirable that the Act should contain some distinct provision respecting interest on arrears of rent. The addition to this section is consistent with existing law and practice.

Section XX. It has also been urged that the Act should declare the proprietor's right of measurement. We have indicated the circumstances in which a proprietor has a right to measure, with a view to enhancing his rent, and lest this should be understood as restricting the right of a proprietor in making a general survey of his estate, we have distinctly recognized that right.

Section XX*a*. One of the sections of Regulation VII, 1799, which has necessarily been repealed as part of the abrogated law for the recovery of arrears of rent, contains a provision requiring all under-tenants having a permanent transferable interest to register all transfers in the cutcherry of the zemindar. It is necessary to re-enact this provision; and opportunity has been taken to provide for the enforcement of such registration should the zemindar refuse to give effect to it.

Section XXI. The alteration made in this section is in accordance with the decision of the Council on that clause in the Limitation of Suits Bill, which has reference to suits for the resumption or assessment of lakheraj or rent-free land.

Section XXI*a*. The first part of this section is a re-enactment of one of the repealed provisions of the existing law. The latter part is rendered necessary by the restriction contained in the last clause of section XVII. It is of course right that the exercise of the summary powers given to the Collector by the enactment referred to in this section should be subject to question by suit in the Civil Court.

Section XXVII. We have thought it right to maintain the provision of the existing law by which suits for the recovery of arrears of rent are instituted on stamp paper of one-fourth the value of that prescribed for suits in the Civil Court. We think that in other cases the plaint may be on stamp paper of 8 annas value; and (as provided in the new Civil Code) that no stamp duty should be leviable for the filing of exhibits or summoning of witnesses.

With respect to the part of the Bill which lays down rules of procedure, we may remark generally that the alterations and additions which we propose are intended to make it conform more closely with the new Code of Civil Procedure. The arrangement of the sections in this part of the Bill, which follows for the most part that of the Small Cause Courts' Bill, appeared to us susceptible of improvement, and we have altered it accordingly.

Section XLV*a*. This section corresponds with the provisions respecting "recognized agents" in the Civil Procedure Code. The naib or gomashtah in charge of the estate of a non-resident landholder should obviously stand on the same footing with respect to his principal, as the gomashtah of a mercantile or trading house does with respect to the merchant or trader.

Section XCVII. We think that when the sharer in a joint undivided estate is entitled to only a share of the rent paid by a cultivator, he should not have the right of distraining for that share. We have accordingly provided that in such cases the right of distraint shall be exercised only by some person authorized to represent the whole body of sharers.

Section XCIX. Considering the very great extent to which the practice of cultivating without written engagements prevails, and the indisposition said to be shown by the ryots in many parts of the country to execute such engagements, we think that it will not be expedient to insist upon the existence of a kabuliut as a necessary condition to the exercise of the right of distraint. Such a requirement might have the effect of increasing the unwillingness of the ryots to an interchange of agreements; and would probably give rise to such a multitude of suits on the part of landholders for the delivery of kabuliuts, as the Collector would find it difficult to dispose of. We have therefore struck out the provision.

Several officers have expressed an opinion that grain once stored should not be liable to distraint. The produce of lands held under different engagements might often be stored in the same granary and could not possibly be distinguished. We incline to this opinion, and have introduced this section to give effect to it.

Report of the Select Committee on the Bill (dated the 26th March 1859.)

Section Ca.

It has been represented that some provision is necessary for crops, such as sugarcane, for example, which do not admit of being stored. The addition which we have made to this section is in accordance with the suggestion of the Senior Member of the Western Board.

Section CI.

The alteration which we have made in section Ca. will do away to a great extent with the necessity for the assistance of the police. The power of calling in the police has, we believe, been much abused, and we think that it will be quite sufficient to give a distrainer who apprehends resistance the support of a peon of the Collectorate.

Section CIV.

We think it unadvisable to make any express reference to the Penal Code, or to leave any provision of this Bill dependent on the passing of that Code. We have accordingly altered section CXXXIII, and omitted the other section, the object of which is sufficiently met by the general law of contempts.

Sections CXXXIII, CXXXV.

The only other amendments which it is necessary to notice are those which relate to appeals. We quite agree in the principle that all cases involving any permanent right or interest, and all cases involving a money claim exceeding a certain fixed amount, should be appealable to the Zillah Court. But we also concur in the opinion which has been expressed by the Calcutta Board and many of the local officers against the finality of any decisions passed by Deputy Collectors; and we have adopted the plan recommended by the Lieutenant-Governor of making all cases in which, if tried by the Collector, the judgment of the Collector would be final, appealable to the Collector when tried by a Deputy Collector. With this modification we think that the limits of finality may safely be extended to Rs. 100. We have thought it advisable to insert a few sections containing rules of procedure for such appeals.

Sections CXLI—CXLIV.

E. CURRIE.
H. RICKETTS.
H. B. HARINGTON.
B. PEACOCK.

Mr. Peacock still objects to those parts of the Bill which give jurisdiction to the Revenue officers and take away the jurisdiction of the Civil Courts, and he adheres to the opinions which he expressed on the second reading.

Abstract of Proceedings of the Legislative Council, dated the 2nd April 1859.

Proceedings of the Legislative Council, dated the 16th April 1859.

Mr. Currie.

Mr. Currie gave notice that he would, on Saturday, the 9th instant, move for a Committee of the whole Council on the Bill "to amend the law relating to the Recovery of Rent in the Presidency of Fort William in Bengal."

Abstract of Proceedings of the Legislative Council, dated the 16th April 1859.

Proceedings of the Legislative Council, dated the 16th April 1859

Mr. Currie.

On the Order of the Day being read for the third reading of the Bill "to amend the law relating to the Recovery of Rent in the Presidency of Fort William in Bengal"—

Mr. Currie moved that the Bill be recommitted to a Committee of the whole Council for the purpose of considering proposed amendments therein.

Agreed to.

Section XXIII related to the cognizance of suits.

Mr. Currie said, he would endeavour to be as brief as possible in explaining his reasons for proposing to change the alteration which was made in this section at the last meeting. Honourable Members would recollect that, in a long

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Mr. Currie.

debate which had transpired on that occasion, objections were taken to the exclusive jurisdiction in suits under this Bill being assigned to Revenue officers. The principal objection was that a large proportion of the officers who were to exercise that jurisdiction were disqualified for the duty by their being invested with police powers. The honourable and learned Member (Mr. Peacock) had said that his objection was not to giving jurisdiction to those officers as Deputy Collectors, but as Deputy Magistrates having executive police functions.

After a full discussion, divisions were had on the several clauses of the section, and it was decided by large majorities that judicial powers should be given to the Revenue authorities in each class of cases to which the several clauses referred. Subsequently, however, an amendment was made at the end of the section on the motion of the honourable and learned Member opposite (Mr. Peacock), the consequence of which was that the regular Courts would also have jurisdiction in these cases. He (Mr. Currie) felt that this alteration would seriously endamage the Bill; but he considered that at any rate the decision which had been arrived at was final as regards jurisdiction. He was very much surprised to find therefore, when they came to the end of the Bill, that a section was introduced on the motion of the honourable and learned Member, or rather on an amendment of that motion by the learned Judge on his left (Sir C. Jackson), restricting Deputy Collectors entrusted with police functions from exercising any judicial powers or other jurisdiction under the Act.

Now, if these amendments were to stand, the effect of them taken together would be, under existing arrangements, to give the whole jurisdiction to the Civil Courts, unless suitors chose to take their suits to the sudder stations. But he could not think that Honourable Members, who voted in the majorities on section XXIII, intended so to nullify their votes. He could not suppose that the Honourable Chairman, whose second vote carried the new section, intended thereby to take away the jurisdiction which by his votes on section XXIII he had given to the Deputy Collectors. He (Mr. Currie) assumed that it was in the Honourable Chairman's intention, as it would shortly be in his power, to qualify these officers when in charge of sub-divisions for acting under the Bill by divesting them of their police functions. He was the more persuaded that this would be the case, as he saw an evident determination in a large majority of the Members of this Council to separate the charge of the police from all other duties, and to vest it in separate officers. Then assuming that we would have local Revenue Courts qualified to try these cases, he could see no occasion for the co-ordinate jurisdiction of the Civil Courts. His objections to such jurisdiction he had stated last Saturday. He had said that the Courts of the Moonsiffs were not fit Courts for the trial of these particular cases. He had stated that it appeared to him that the class of persons from which the Moonsiffs were for the most part taken was not of such a social status that it could be reasonably expected that the young men who, after passing a technical examination, were appointed Moonsiffs would be able to resist the influence of wealth and power to which they would find themselves exposed. It was to be remembered that in cases under this Bill the contest was almost always between the rich and powerful on the one hand, and the poor and weak on the other. The special object of the Bill was to secure justice to the ryot. If, therefore, they could establish a more independent Court than the Moonsiff's Court, they ought to provide, according to the original terms of the Bill, that all these cases should be tried in that Court; and that it should not be in the power of a zemindar to take a ryot to another Court, where he would not have the same chance of getting a proper hearing. Another reason for objecting to giving jurisdiction to the Civil Courts was that, according to measures in contemplation for the reconstitution of the Civil Courts, the number of Moonsiffs, under the operation of the proposed Small Cause Courts, might be considerably reduced; but then it would be necessary to provide for the determination of rent suits, and one of the recommendations of the new class of Courts was that it would enable them in time perhaps to dispense altogether with the Moonsiff's Courts.

What he had said referred chiefly to the Lower Provinces of Bengal, and he would remark that throughout these debates the state of things in Bengal had been too exclusively considered. It seemed to be forgotten that at least one-half of the territories to which this Bill would apply was under the Government of the North-Western Provinces; and no one who had any know-

ledge of the circumstances of those Provinces doubted the desirability of removing rent cases from the cognizance of the Civil Courts. In the year 1850 two Judges of the Agra Sudder urged the local Government to obtain a law for the purpose. This was not done, but large strides were made in the same direction. The whole of the Collectors had been invested with full powers under section XX, Regulation VII, 1822, in all cases relating to disputes between landlord and tenant, and whenever such cases were taken into the regular Courts, they were required by a rule of practice to be referred to the Collector for adjustment and report. So that in effect these cases were very much in the hands of the Revenue officers, and he had no doubt of the expediency of placing them so entirely. With reference, therefore, to the circumstances of the North-Western Provinces, and to what he had stated regarding the Moonsiffs in the Lower Provinces, he urged the adoption of the amendment which he was about to move.

MR. CURRIE

MR. CURRIE referred to several parts of the Bill as it now stood, which laid down rules of procedure for the Collectors, observing that they would not apply to the Civil Courts, and that the difference of procedure in different Courts in the same classes of cases would cause doubt and embarrassment. He did not consider this as in itself a sufficient reason for urging an alteration of the section in question. In adducing it he only intended that it should be taken into consideration in connection with the other reasons urged by him.

With these remarks he begged to move the substitution of the word "shall" for the word "may" in the 37th line of the section.

MR PEACOCK

MR. PEACOCK said, it was very inconvenient after full discussion that the Bill should be re-committed. It was not certainly contrary to the Standing Orders, but the primary object of the Standing Order relating to re-committal was to enable errors to be corrected. He recollected that the Committee by whom the Standing Orders were prepared considered whether it should be forbidden to re-open a matter which had been discussed and determined. It was thought that no express order on such a subject was requisite.

Why were they called upon to take away the jurisdiction conferred last Saturday? What was intended to be done under the law as it had been now amended? Were the officers who, as had been proposed, were to be appointed Deputy Magistrates to have their police functions taken away, because they were now required to act as Deputy Collectors; or were distinct Deputy Collectors to be appointed? In the latter case, would the finances support the double set of officers?

SIR. JAMES OUTRAM

SIR JAMES OUTRAM said that, being one of those who voted last Saturday for the amendment which it was now proposed to alter, he begged to be allowed to explain that, in voting for the present motion, he had not the slightest intention of nullifying his original vote. His impression at the time was that by allowing litigants the option of going into the old Courts, if they preferred it, the defendant must be a consenting party, without which the new Courts provided by this Bill must be resorted to. Had he known that the power of choosing the Court would rest with the plaintiff alone, he should have voted against and not for the amendment in question.

MR HARINGTON.

MR. HARINGTON said, referring to what had fallen from the honourable and learned Member of Council on his left (Mr. Peacock) in respect to the course pursued by the Honourable Member for Bengal on the present occasion, he was willing to admit that there was an inconvenience in re-opening questions which had been settled after full discussion, but there was one consideration which must, he thought, outweigh and override all other considerations, and that was the duty which rested upon them of making every Bill, at any and every stage, as perfect as was in their power before it passed into law. He found this principle to have been clearly enunciated by their late highly respected Vice-President not very long before he left them; he said, "he thought that it would be very unwise for the Council to lay down a rule against re-considering a matter on which a vote had once been taken. Their object was to make their Bills as perfect as possible, and upon many subjects of debate Honourable Members might be found to alter the opinion which they had previously expressed." This had actually happened as regarded the question now under discussion. The honourable and gallant General (Sir James Outram) had frankly told them, that his opinion had undergone a change upon that question since it

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Mr. Harington.

was last debated, and it appeared to him (Mr. Harington) that the Honourable and gallant Member had stated a very good and sufficient reason for the alteration which had taken place in his views. Other Honourable Members who had voted with the honourable and learned Member on his left, on Saturday last, might also see cause to change their opinions particularly in consequence of the introduction into the Bill, after the section under discussion was settled, of the new section proposed by the honourable and learned Judge opposite (Sir C. Jackson). If he had understood the Honourable and learned Member of Council rightly, his principal objection to the transfer to the Deputy Collectors lately appointed in Bengal of the jurisdiction which might now be exercised by the Civil Courts in the different classes of cases mentioned in the Bill, was that they were also police officers, and that their police duties would often interfere with the proper discharge of the duties which would devolve upon them in the trial of those cases. He pointed out that as Civil Judges they might appoint a day for the hearing and decision of a suit instituted before them and direct the parties to be in attendance on that day with their witnesses and documentary proofs, but on the morning of the day which had been fixed for the trial and determination of the case, they might be summoned away to some other part of their jurisdiction to enquire into a case of murder or of dacoity, and that, when this happened, the suit pending before them in their capacity of Civil Judges must be postponed, to the serious loss and inconvenience of the parties and their witnesses; he also seemed to think that in the discharge of their duties as police officers ill-feeling would often spring up between these Deputy Collectors and the parties resorting to their Courts in their judicial capacity, which would prejudice their minds and might exercise an improper influence upon their decisions. He (Mr. Harington) was not prepared to say that there was no force in these objections; but he thought that they had been entirely removed by the new section introduced on the Motion of the Honourable and learned Judge opposite, which declared that none of the officers referred to should be invested with jurisdiction under the Bill who exercised any police functions.

There was, therefore, the less reason for retaining the permissive in lieu of the imperative character given to the section under consideration at the previous Meeting of the Council. At the time that the section was settled, as it now stood, he (Mr. Harington) believed that every Honourable Member who voted upon it considered the question as to what officers were to hear and determine cases coming within the provisions of the Bill to have been finally determined, and that the Deputy Collectors who would be competent to try such cases would be also Deputy Magistrates, and as such invested with police functions. This was certainly his own belief, and the motion therefore of the honourable and learned Judge, of which no previous notice or intimation had been given, took him quite by surprise.

When the section was last under consideration, he had endeavoured to point out what appeared to him to be the objection to Courts exercising co-ordinate jurisdiction. Where such Courts existed, the plaintiff, who could elect in which Court he would bring his suit, enjoyed a privilege which, from the circumstances of the case, could not extend to the defendant, and which was not unfrequently exercised at his expense; but if it was right in principle that a plaintiff should have the power of choosing in which of two or more Courts he would sue, equal justice would seem to require that the defendant should have a similar power of determining in which Court he would make his defence. It must be obvious, however, that if such a power were given to the defendant, it would cause great delay and confusion. This showed that a system of co-ordinate Courts operated unequally. If a plaintiff felt that it was more for his interest to go into this Court than into that, he must also know that it was less for the interest of the defendant to defend himself in the Court selected as that to try the action. The reason which had induced the plaintiff to give the preference to one Court over another would generally operate contrariwise in so far as the defendant was concerned, and lead him to wish that the suit had been brought in some other Court competent to hear it. When the Government had established sufficiently good Courts for the trial of a particular class of cases, he (Mr. Harington) thought that all persons concerned in cases of that description, whether as plaintiff or defendant, should be compelled to resort to those Courts and should not be permitted to go elsewhere.

Another objection which he had to the section as now framed was that it would oblige the Government to keep up Courts which would not otherwise be required, or defendants might be dragged to a considerable distance to make their defence. This would often be just what the plaintiff desired. The plaintiff being generally the richer and more powerful man of the two, distance to him would be of far less consequence than to the defendant. For these reasons he should give his hearty assent to the amendment proposed by the Honourable Member for Bengal.

MR. LEGEYT. MR. LEGEYT said, on Saturday last he voted in favour of the substitution of "may" for "shall." He did so, because he felt a great objection to entrusting executive police officers with the decision of civil suits. As the matter stood in respect to this Bill, he was glad to compromise by making it permissive to the suitors to go to the Civil Courts if they preferred. But the section introduced by the honorable and learned Judge at the end of the Bill so completely met his objections, that as by it Deputy Collectors having any police charge would not have jurisdiction over the civil suits mentioned in this Bill, he should support the amendment now moved by the Honourable Member for Bengal. He thought that these descriptions of suits would be better decided by the Revenue than by the Civil Courts, and, therefore, he did not see why plaintiffs should have the power of forcing defendants into an adawlut. He also hoped that, by relieving the adawluts of these suits, the reconstruction of those Courts might be facilitated; and this he considered an object of great importance.

But there was still one point on which he felt some doubt. It was this, whether the words Deputy Collector in the new section went far enough. He (MR. LEGEYT) would exclude every Revenue officer exercising a police charge from trying revenue suits, and he thought that it was objectionable that this power should be left even with a Collector, who was also the Magistrate of a district and in charge of the police. He did hope to see Collectors and Magistrates relieved from executive police duties, and was anxious to carry that principle as far as it could be carried.

MR. GRANT. MR. GRANT said, he did not quite know after that explanation what vote the Honourable Member for Bombay would give. He would not hesitate for a moment himself in changing his vote, if convinced that the Bill was rendered worse by the amendment which it was now proposed to cancel. He had listened to all the arguments advanced with a mind open to conviction, but he remained of opinion that the amendment, which left the Civil Courts with concurrent jurisdiction, was an important improvement. He took very much the view taken by the honourable and learned Judge (Sir C. Jackson) at the last Meeting. The natural course was that these suits should be tried by the Civil Courts. They were civil suits, and the Civil Courts were established for the trial of civil suits. This was not only the natural course, but it was also the law now, as the Civil Courts now had jurisdiction in these suits. Therefore everything appeared to be in favour of the existing state of things; and this being so, he certainly thought with the honourable and learned Judge that it was the duty of those who wished to change the law, to show something objectionable in it, not fancifully but practically objectionable. He thought it the business of a Legislature of practical men to require those who proposed such a change to show that the existing law had in fact bad effects. But not one such instance had been mentioned either by the Honourable Member for Bengal or by the Honourable Member for the North-Western Provinces, although, doubtless, the great experience of both the Honourable Members, if such cases existed, would have enabled them to mention them. A theoretical objection had been taken to co-ordinate jurisdictions, and urged with great ability, but such jurisdictions existed now, and no one had shown that in practice any harm had been done by them. Such a system existed in all the presidency towns where the Supreme and Small Cause Courts had concurrent jurisdictions. Had any one heard of any practical mischief in consequence? In England such jurisdictions were common and worked well. For these reasons—not because he persisted in voting as he had voted before, but because he still believed that the amendment was a real improvement—he would oppose the motion.

MR. HARINGTON. MR. HARINGTON said, the honourable Chairman had observed that neither the Honourable Member for Bengal, nor himself, had mentioned any cases to

show that practical inconvenience had resulted from the present state of the law. He (MR. HARINGTON) had just recollected a case in which an influential zemindar brought a summary suit for rent in the Collector's office against a large body of cultivators, who were no otherwise connected than that they cultivated land in the same estate, and obtained a judgment. The defendants, being dissatisfied with the decision, proposed to contest it in the Civil Court; but, although the plaintiff was allowed, under the practice of the Revenue Courts, to institute a single action against them all on one sheet of stamp paper, they were each obliged to bring separate actions to set aside the award of the Revenue Officer upon full stamp paper proportioned to the amount of their several liabilities. Had the plaintiff brought his suit in the Civil Court in the first instance, he must have sued each cultivator separately, and have valued his claim accordingly, which did not suit his purpose. The Honourable Chairman had also noticed that in the presidency towns co-ordinate Courts existed; that in certain classes of cases the plaintiffs might bring their suits either in the Supreme Court or in the Court of Small Causes; and that he had never heard that this power had been abused. What the Honourable Chairman had stated was, no doubt, quite correct; but he (MR. HARINGTON) believed that the heavy expenses of the Supreme Court deterred parties from resorting to that Court, who could take their cases into the Small Cause Court, while in the Act constituting the latter Court he thought there was a section, though he could not just then put his hand upon it, which enabled the Judges of the Supreme Court, whenever they considered that a suit had been unnecessarily instituted in that Court instead of in the Court of Small Causes, to refuse to allow the plaintiff his costs, though he might succeed in his action.

MR. HARINGTON.

The Council divided—

Ayes 6:	*Noes 3:*
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	The Chairman.
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	

So the motion was carried.

MR. CURRIE then moved the restoration of the following words at the end of the section :—

MR. CURRIE.

"And except in the way of appeal as provided in this Act, shall not be cognizable in any other Court, or by any other officer, or in any other manner."

The motion was carried, and the section then passed.

The new section after section CXLVIII was omitted, on the motion of Mr. Currie.

Sections CLX and CLXI were passed after amendments.

MR. CURRIE moved that the new section at the end of the Bill stand after section CLXIII.

Agreed to.

MR. RICKETTS said, he desired to move an alteration in the above new section. There were some Collectors who, because they were placed in charge of comparatively small districts, were called Deputy Collectors, although they exercised the same powers as Collectors. He therefore proposed after the words "Deputy Collector" to insert the words "appointed under Regulation IX, 1833, of the Bengal Code."

MR. RICKETTS.

After some conversation, MR. LEGEYT moved that the words "no revenue officer not being a Collector" be substituted for the words "no Deputy Collector."

MR. HARINGTON said, the amendment proposed by the Honourable Member for Bombay would, if carried, seriously embarrass the Government of the North-Western Provinces, and he could not see that any practical advantage would result from its adoption, but the contrary. At present it frequently happened in the North-Western Provinces that a Joint Magistrate and Deputy Collector was placed in Police, Revenue, and Judicial charge of one or two pergunnahs, of which he had the entire management, subject of course to the supervision and control of his immediate official superior. This was found to be a very

MR. HARINGTON.

good way of training up young men for the higher offices of Magistrate and Collector, in which the same functions—Police, Judicial, and Revenue—would have to be discharged under a much less degree of supervision and control in respect to an entire district. If the amendment of the Honourable Member for Bombay were carried, either the police functions of the Joint Magistrates and Deputy Collectors must be taken away, or they would not be competent in their capacity of Revenue officers to decide cases under the Bill. He should oppose the motion.

MR. HARINGTON.

MR. LEGEYT said, his object in proposing his amendment was to carry out the principle enunciated in the section under discussion. It appeared to him that, if an Assistant or Deputy Collector, who was also a Deputy Magistrate, and as such exercising a control over the executive police, no matter what his standing might be, were empowered to exercise these civil judicial powers, it would certainly be an infringement of the principle they hoped to adopt. If the Executive Government chose to step in and, as a special case, invest a Deputy Magistrate with the powers of a Collector, in fact make him a Collector for the purposes of this Bill, as it now stood, they could do so, but it was to be hoped such an exercise of power would not be frequent.

MR LEGEYT.

MR. LEGEYT'S motion being put, the Council divided—

Ayes 4:	*Noes 5*:
Sir Charles Jackson.	Mr. Forbes.
Mr. LeGeyt.	Mr. Harington.
Mr. Peacock.	Mr. Currie.
The Chairman.	Mr. Ricketts.
	Sir James Outram.

So the motion was negatived.

Mr. Ricketts' motion was put and agreed to, and the section as amended then passed.

MR. CURRIE said, by Regulation IV, 1821, the Collectors of Revenue were authorized, "with the sanction of the Board of Revenue, to delegate to their Assistants any part of their prescribed duties to which, from the extent of their general business or other cause, they might be unable to give due attention themselves." As it was not intended that Collectors should delegate to their Assistants the duties prescribed by this Bill, he proposed to insert the following new section before section CLXIV:—

MR. CURRIE.

"Assistants to Collectors shall not exercise any powers under this Act unless invested by Government with the powers of Deputy Collectors, in which case they may exercise the powers hereby assigned to Deputy Collectors."

After some conversation, the section was agreed to.

A trifling amendment was made in section CL.

The Council having resumed its sitting, the Bill was reported with amendments.

MR. CURRIE then moved that the Bill be read a third time and passed.

MR. PEACOCK said, he was sorry to vote against the Bill, but he was not prepared to support it. The jurisdiction of the Civil Courts was taken away, and he did not know what was to be substituted for it. He proposed to ask the Bengal Government, either directly or through the Government of India, how many Deputy Collectors there were. They might place the people in great difficulties if every man should be driven to the cutcherry of the Collector or of the Assistant vested with full powers. He begged to ask the Honourable Member to postpone the third reading for a week, that the desired information might be obtained. If the motion for the third reading were put, he would vote against it.

MR. PEACOCK.

MR. CURRIE said, he did not think that the information proposed to be called for would at all help them. He admitted that, at present, nearly all the local officers were invested with police powers, but he apprehended that this arrangement was not intended to stand. At any rate the Collectors and Deputy Collectors who for years past had tried these cases to the number of 56,000 in the year, as had been stated, would be available for the duty as heretofore. There might be some temporary embarrassment from the introduction of the section, under which no Deputy Collector entrusted with police functions could exercise jurisdiction under the Bill. But he saw no sufficient reason for delaying the third reading, and he would therefore press his motion

MR. CURRIE.

MR. RICKETTS said, he could not suppose that it was necessary to postpone the third reading. They might safely trust the Executive Government to provide Courts to carry out the provisions of the Bill.

MR. RICKETTS.

He could not give his vote in favour of the third reading without offering one word of congratulation to his honourable friend at the prospect of this Bill passing into law. The Bill was equally creditable to the Honourable Member's great ability and to his untiring devoted industry. Few, very few, knew the trouble that the preparation of this Bill had occasioned. Setting aside those sections which had led to a difference of opinion (for a moment let them be forgotten), they would all agree that the work upon the whole was a right good work. The Bill, if passed, would benefit all those who in this country were connected with the land, that is, it would benefit about thirty millions of people. That was a pleasant thought for the Honourable Member to put under his pillow and go to sleep upon in a snug little room in the old country. He had seen many instances of old servants who, when the time for retirement drew nigh, and when their thoughts were turned to the westward, had gradually lost almost all their interest in the country where they had passed their days, and were content to do little more than just what was necessary to carry on the work of their office without occasioning unpleasant remarks. A very different case was that of the Honourable Member. They had all seen his honourable friend working on to the last as he had worked at first, and in his mid career doing all he could for the good of the people. No brass—nothing of that sort—would commemorate his career here, but should this Bill pass, he believed that Currie's Act would for long years to come, as long as we collected land revenue, till Bengal was sold, be a lasting memorial that as in earlier days so to the very last he worked on with success, and with that right honest spirit which had characterised his whole career as a servant of this Government.

MR. CURRIE.

MR. CURRIE did not know whether he ought to say anything. He could not, however, refrain from saying that he felt most thankful to the Honourable Member, but at the same time deeply humbled by the terms in which his poor exertions had been spoken of. Such praise was altogether undeserved by him. The Bill of which his honourable friend had spoken so highly was very little more than a compilation of the labours of others. Many had worked in the same field. His honourable friend himself had many years ago prepared a summary suit law in supersession of the existing laws, and there were similar works by other hands. He had had the advantage of the labours of others, and had done little more than work out and put together the materials which they had prepared. He could not therefore take the credit which the Honourable Member had so kindly assigned to him.

MR. PEACOCK.

MR. PEACOCK said, he fully concurred in what had been said by the Honourable Member of Council opposite (Mr. Ricketts). They were deeply indebted to the Honourable Member for Bengal. At the same time when they were called upon to remove jurisdiction from the ordinary Courts, they ought to see that Courts were provided and in sufficient numbers. Were the Deputy Magistrates appointed especially for police duties to be deprived of those duties that they might act under that Bill? He would rather improve the existing Courts than make these alterations. Were the present Deputy Collectors sufficiently numerous, without the appointment of others, to conduct trials under the new law? If they were called upon to vote blindly, he could not do it.

The Council divided—

Ayes 7:	*Noes 2:*
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	
The President.	

So the motion was carried, and the Bill read a third time.

The Bill having passed—

MR. PEACOCK gave notice of his intention to record his dissent.

[The amendments in the Bill are printed in italics. The words in the margin are those proposed to be omitted.]

AMENDED BILL.

Bill as amended and passed.

A Bill to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.

WHEREAS it is expedient to re-enact with certain modifications the provisions of the existing law relative to the rights of ryots with respect to the delivery of pottahs and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same; to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears; and to amend the law relating to distraint; It is enacted as follows:—

Preamble.

I. The following Regulations and Acts and portions of Regulations and Acts are hereby repealed, except in so far as they repeal any other Regulation or Act, and except as to proceedings commenced before the date of this Act coming into force, namely,—

Laws repealed and modified.

Regulation XVII, 1793 (*to empower landholders to distrain and sell the personal property of ryots, &c.*),

So much of Regulation IV, 1794 (*to determine disputes regarding the grant of pottahs to ryots, &c.*) as is still in force,

Regulation XXXV, 1795 (*for better enabling individuals to recover arrears of rent or revenue due to them*),

Regulation XLV, 1795 (*to empower landholders in the Province of Benares to distrain, &c.*),

Sections IX and X, Regulation LI, 1795 (*respecting ryotty pottahs in the Province of Benares*),

Sections I to XX, Regulation VII, 1799 (*to enable landholders to realize their rents with greater punctuality, &c.*),

Sections I to XX, Regulation V, 1800 (*to enable landholders in the Province of Benares to realize their rents with greater punctuality, &c.*),

Regulation XXVIII, 1803 (*to empower landholders in the Ceded Provinces to distrain, &c.*),

Sections IX and X, Regulation XXX, 1803 (*prescribing rules for the grant in the Ceded Provinces of pottahs to ryots, &c.*),

Section IV, Regulation II, 1805 (*to provide a limitation of time for certain suits, &c.*),

Bill as amended and passed.

Section XIX, Regulation VIII, 1805 (*for extending certain Regulations to the Ceded and Conquered Provinces, &c.*),

Sections V to XXIII, Regulation V, 1812 (*for amending some of the rules at present in force for the collection of the Land Revenue*),

Sections XV and XVI, Regulation XIX, 1817 (*for amending certain Regulations in force relative to process for recovery of arrears of rent, &c.*),

Section XXVII, Regulation XX, 1817 (*relating to resistance to distraint for arrears of rent, &c.*),

Sections XVIII and XIX, Regulation VIII, 1819 (*relating to Putnee Talooks and the system established for the collection of rents generally, &c.*),

Section IV, Regulation II, 1821 (*relating to the duties of City and Zillah Judges, &c.*),

Section XXII, and so much of Section XX and the following sections of Regulation VII, 1822 (*relating to the settlement of the Land Revenue in the Ceded Provinces and Cuttack, &c.*) as apply to suits for rent, to complaints of excessive demand or undue exaction of rent or of the non-delivery of pottahs or receipts, to suits against agents for money or accounts, or to any other suits or complaints arising out of disputes between landholders or farmers and their under-tenants respecting the rent and occupancy of land,

Regulation XIV, 1824 (*for modifying the rules in force for referring to the Collectors summary suits in cases of arrear or exaction of rent*),

Regulation VIII, 1831 (*for amending the existing provisions relative to the trial of summary suits and claims for arrears or exactions of rent*),

Act I of 1839 (*relating to the appointment of persons to sell property distrained for the recovery of arrears of rent*),

Act X of 1846 (*for regulating the proceedings in certain cases of distraint for arrears of rent*)—and

Act VIII of 1848 (*to modify the provisions of Sections IX, X, XI, and XIII of Regulation V, 1812, of the Bengal Code*).

Sections XIV and XV, Regulation IX, 1833 (*for the more speedy decision of certain suits, and for enforcing the production of village accounts, &c.*), so far as the same are applicable to the territories under the Government of the *Lieutenant*[1]-Governor of Bengal, are also repealed.

[1] Deputy

Such parts of Regulation VIII, 1793 (*prescribing rules for the decennial settlement of the public Revenue in Bengal,*

Behar, and Orissa, &c.), and Regulation XXX, 1803, as relate to the adjudication of penalties for the refusal of pottahs and receipts for rent and for the exaction of any sums as abwab or in excess of the amount specified in any engagements for the payment of rent, and such parts of section XXVI, Act I of 1845 (*to amend Act No. XII of* 1841, *entitled "an Act for amending the Bengal Code in regard to sales of land for arrears of Revenue"*), as relate to the enhancement of rents and the ejectment of tenants by the purchaser of an estate sold for arrears of Government revenue, are declared subject to the following modifications.

Bill as amended and passed.

[1] and cultivator of land.

II. Every ryot[1] is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable, a pottah[2] containing the following particulars :—

Ryot entitled to a pottah.

[2] Specifying the annual amount of such rent and the instalments in which it is to be paid, or, in cases in which the rent is payable in kind, the proportion of the produce to be delivered.

The quantity of land; and where fields have been numbered in a Government survey, the number of each field.

The amount of annual rent.

The instalments in which the same is to be paid.

And any special conditions of the lease.

If the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery.

III. Heredltary ryots holding lands at fixed rates of rent are entitled to receive pottahs at those rates. All other ryots and cultivators of land are entitled to receive pottahs according to the rates of rent for the time being established in the pergunnah in which the land is situate, for land of the same description and quality, or if there be no known and recognized pergunnah rates, according to the customary rates payable for land of a similar description in the places adjacent. The above rules are applicable not only to the first grant of pottahs, but also to the renewal (where right of renewal exists) of pottahs which may expire or which may become cancelled in consequence of the sale of the tenure or estate in which the land is situate for arrears of rent or revenue.

III. *Ryots who, in the Provinces of Bengal, Behar, Orissa, and Benares, hold lands at fixed rates of rent, which have not been changed from the time of the permanent settlement, are entitled to receive pottahs at those rates.*

Ryots holding land at fixed rates to receive pottahs.

IV. *Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a ryot in the said Provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.*

If rent of land be not changed for 20 years.

V. *Ryots having rights of occupancy, but not holding at fixed rates as described in the two preceding sections, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.*

Ryots having right of occupancy, but not holding at fixed rates, to receive pottahs.

Bill as amended and passed.

VI.* Every[1] ryot,[2] *who has cultivated or held land for a period of twelve years*, has a right of occupancy in the land[3] *so* cultivated *or held* by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khamar, neejjote, or seer land belonging to the proprietor of the estate or tenure and[4] *let by him on lease* for a term or year by year,[5] nor (as respects the actual cultivator) to lands sub-let[6] *for a term or year by year* by a ryot having a right of occupancy. *The holding of the father, or other person from whom a ryot inherits, shall be deemed to be the holding of the ryot within the meaning of this section.*

Right of occupancy of ryot cultivating or holding land for twelve years.

(* Section IV of the original Bill.)

[1] resident

[2] and cultivator

[3] held or

[4] leased

[5] to a resident cultivator

[6] to a resident cultivator

VII.† Nothing contained in[7] the[8] last preceding[9] section shall be held to affect the terms of any written contract[10] *for the cultivation of land* entered into between a landholder and a[11] ryot[12] when it contains any express stipulation contrary thereto.

Saving of terms of written contracts.

† (Section V of the original Bill.)

[7] either of

[8] two

[9] sections

[10] for the payment of specific rates of rent, nor of any contract

[11] resident

[12] or cultivator for the clearing and cultivation of waste land, or for the cultivation of land not previously in the occupation of such ryot or cultivator, when by such contract conditions of occupancy have been agreed on between the parties, or a right of re-entry has been expressly reserved to the landholder. Resident ryots cultivating land not previously in their occupancy without a pottah or other instrument in writing from the proprietor of the estate or tenure in which the land is situate, shall not acquire a right of occupancy in such land until rent shall have been paid by them for the same to the said proprietor for a period of three years.

VIII. *Ryots not having rights of occupancy are entitled to pottahs only at such rates as may be agreed on between them and the persons to whom the rent is payable.*

Pottahs to which ryots not having rights of occupancy are entitled.

IX.‡ Every person who grants a pottah is entitled to receive from the person to whom the pottah is granted a kubooliyet or counterpart engagement in conformity with the terms of the pottah. The tender *to any ryot* of a pottah[13] *such as the ryot is entitled to receive shall* be held to entitle the person to whom the rent is payable to receive a kubooliyet from such ryot.[14]

Person granting pottah entitled to a counterpart engagement.

‡ (Section VI of the original Bill.)

[13] To any resident ryot or cultivator at the rate of rent which such ryot or cultivator is liable to pay.

[14] or cultivator

X.§ Every under-tenant *or* ryot,[15] from whom any sum is exacted in excess of the rent specified in his pottah, *or payable under the provisions of this Act*, whether as abwab or under any other pretext, and every under-tenant, ryot, or cultivator from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent, *damages not exceeding* double the amount so exacted or paid. Receipts for rent shall specify the[16] *year or years* on account of which the rent is acknowledged to have been paid; and any refusal to make such specification

Exactions in excess of rent or receipt withheld.

Form of receipt.

§ (Section VII of the original Bill.)

[15] or cultivator

[16] period

shall be held to be a withholding of a receipt.

[*] (Section VIII of the original Bill.)

XI.* The power heretofore vested in zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose is withdrawn, and all such persons are prohibited from adopting any[1] *means of compulsion* for enforcing payment of rents due to them other than are authorized by the provisions of this Act.[2]

Landholder not to compel the attendance of tenant for adjustment of rent or for any other purpose.

Payment of rent to be enforced only under this Act.

[2] But nothing in this Act shall be held to restrict the right of landholders to measure any land in respect of which rent is paid to them, provided that such measurement is not at variance with the conditions under which the land is held by the persons by whom such rent is paid.

[†] (Section IX of the original Bill.)

XII†. If payment of rent, whether the same be legally due or not, is extorted from any under-tenant *or* ryot[3] by illegal confinement or other duress, such under-tenant *or* ryot[4] shall be entitled to recover[5] *such damages, not exceeding in any case the sum of two hundred rupees, as may be deemed a reasonable compensation for the injury done him by such extortion. An award of compensation under this section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law.*

Damages for extorting payment of rent by duress.

[3] or cultivator

[4] or cultivator

[5] three times the amount so extorted, in addition to any penalty to which the person practising such extortion may be subject by law.

[‡] (Section X of the original Bill.)

XIII.‡ No under-tenant *or* ryot,[6] who holds or cultivates land without a written engagement, or under *a*[7] written engagement not specifying the period of such engagement, or whose engagement has expired, or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant, *or* ryot,[8] in or before the month of *Cheit*[9] specifying the rent to which he will be subject for the ensuing[10] year, *and the ground on which an enhancement of rent is claimed.* Such notice shall be served by order of the Collector on the application (which may be on plain paper) of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant *or* ryot.[11] *If for any reason the notice* cannot be served personally upon[12] *the under-tenant or ryot,* it shall be affixed at his usual place of residence, or if he have no such place of residence in the district in which the

Enhancement of rent of ryot holding without, or after expiry, &c., of written engagement.

[6] or cultivator

[7] any

[8] or cultivator

[9] Jeyte

[10] Fush or for the current Bengal

[11] or cultivator; but if he shall abscond or conceal himself so that it

[12] him

Bill as amended and passed.

land is situate, the mode of service of such notice shall be by affixing it at the mal cutcherry of such land or other conspicuous place thereon, or at the village chowree or chowpal, or at some other conspicuous place in the village *in which the land is situate.*

XIV.* Any under-tenant *or* ryot,[1] on whom such notice as aforesaid has been served, may contest his liability to pay the enhanced rent demanded of him, either by complaint of excessive demand of rent as hereinafter provided, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent.[2]

Mode of contesting enhancement of rent.

* (Section XI of the original Bill.)

[1] or cultivator

[2] No ryot or cultivator shall, under any circumstances, be liable to any enhancement of rent in excess of the rates specified in section III of this Act.

XV. No dependent talookdar or other person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the ryots, who, in the Provinces of Bengal, Behar, Orissa, and Benares, holds his talook or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in section LI, Regulation VIII, 1793, or in any other law, to the contrary notwithstanding.

Dependent talookdar, &c., holding land at fixed rent without change since permanent settlement not liable to enhancement of rent.

XVI. Whenever, in any suit under this Act, it shall be proved that the rent at which a talook or other tenure is held in the said Provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such talook or tenure has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.

Rent of talookdar, &c., not changed for twenty years to be *primâ facie* evidence of occupancy at that rent since permanent settlement.

XVII. No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him except on some one of the following grounds, namely :—

Grounds on which ryot having right of occupancy is liable to enhanced rent.

That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

That the rate paid by him is below that prevailing in adjacent places.

That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

That the value of the land, &c., has increased independently of the ryot.

Bill as amended and passed.

That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

That the quantity of land held by the ryot is greater than he has paid rent for.

XVIII. Every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot, or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

When ryot may claim abatement of rent.

* (Section XII of the original Bill).

[1] or cultivator

[2] lands

XIX.* Any ryot[1] who desires to relinquish the *land*[2] held or cultivated by him, shall be at liberty to do so provided he gives notice of his intention in writing to the person entitled to the rent of the *land*[3] *or his authorized agent* in or before the month of *Cheit*[4] of the year[5] preceding *that in* which the relinquishment is to have effect. If he fail to give such notice, and the *land*[6] is not let to any other person, he shall continue liable for the rent of the *land*.[7] If the person entitled to the rent of the land *or his agent* refuse to receive any such notice and to sign a receipt for the same,[8] *the ryot may make an application on plain paper to the Collector, who shall thereupon cause the notice to be served on such person or his agent in the manner provided in section XIII.*

Relinquishment of land by ryot after notice given.

[3] lands

[4] Jeyte

[5] Bengal year in which, or of the Fusli

[6] lands are

[7] lands

[8] it shall be served upon him by the Collector on application for such service being made by the ryot or cultivator within the time abovementioned.

† (Section XIII of the original Bill)

XX.† Any instalment of rent which is not paid on or before the day when the same is payable according to the pottah or engagement, or, if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage, shall be held to be an arrear of rent under this Act, *and unless otherwise provided by written agreement, shall be liable to interest at twelve per centum per annum.*

What to be deemed an arrear of rent under this Act.

‡ (Section XIV of original Bill.

[9] or cultivator of land

[10] or Fusli

[11] or cultivator

[12] and the person to whom the rent is payable shall be at liberty to make such new arrangement as he may judge proper for the management of the land in question.

XXI.‡ When an arrear of rent remains due from any ryot[9] at the end of the Bengal[10] year, *or at the end of the month of Jeth of the Fusli or Willayuttee year,* as the case may be, such ryot[11] shall be liable to be ejected from the land in respect of which the arrear is due.[12] *Provided that no ryot, having a right of occupancy or holding under a pottah the term of which has not expired, shall be ejected*

Liability of ryot to be ejected for arrear due.

Proviso.

Bill as amended and passed.

otherwise than in execution of a decree or order under the provisions of this Act.

(Section XV of the original Bill.)

Liability of farmer to have his lease cancelled for arrear adjudged due.

XXII.* When an arrear of rent shall be adjudged to be due from any farmer or other lease-holder not[1] *having a permanent or* transferable interest in the land, the lease[2] *of* such[3] leaseholder shall be liable to be cancelled, *and the lease-holder to be ejected. Provided that no such lease shall be cancelled nor the lease-holder ejected otherwise than in execution of a decree or order under the provisions of this Act.*

[1] being an actual cultivator nor having a right of occupancy or a

[2] held by

[3] farmer or

Proviso.

XVI. Provided always that no ryot or cultivator shall be ejected from the land held or cultivated by him on account of an arrear of rent remaining due at the end of the year, and no lease shall be cancelled on account of an arrear of rent, otherwise than in execution of a decree or order under the provisions of this Act.

† (Section XVII of the original Bill.)

Cognizance of suits under this Act.

XXIII.† All suits for the delivery of pottahs or kubooliyets, or for the determination of the rates of rent at which such pottahs or kubooliyets are to be delivered;

2. All suits for damages on account of the illegal exaction of rent or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress;

3. All complaints of excessive demand of rent, and all claims to *abatement*[4] of rent[5];

[4] remission

[5] on account of diluvion or other cause;

4. All suits for arrears of rent due[6] on account of land either kherajee or lakheraj, or *on account* of any rights or pasturage, forest-rights, fisheries, or the like;

[6] whether

5. All suits to eject any ryot[7] or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot[8] may be liable to ejectment or a lease may be liable to be cancelled;

[7] or cultivator

[8] or cultivator

6. All suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot,[9] farmer or tenant has been illegally ejected by the person entitled to receive rent for the same;

[9] or cultivator

7. All suits arising out of the exercise of the power of distraint conferred on zamíndárs and others by sections[10] CXII and CXIV of this Act, or out of any acts done under color of the exercise of the said power as hereinafter particularly provided;

[10] XCVII, &c.

shall be cognizable by the Collectors of land revenue and shall be instituted and tried under the provisions of this Act and, *except in the way of appeal as provided in this Act*, shall not be cognizable in any other Court or by any other officer, or in any other manner.

‡ (Section XVIII of the original Bill.

Suits by zamíndárs against their agents for money or accounts.

XXIV.‡ Suits by zamíndárs and others in receipt of the rent of land, against any agents employed by them in the management of land or collec-

tion of rents, *or the sureties of such agents,* for money received or accounts kept by such agents *in the course of such employment,* or for papers in their possession, shall be cognizable by the Collectors, and shall be instituted and tried under the provisions of this Act, *and shall not be cognizable in any other Court except in the way of appeal as provided in this Act.*

Bill as amended and passed.

* (Section XIX of the original Bill.)

Ejectment of cultivators, farmer, &c., by zamíndárs.

XXV.* If any zamíndár or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. Provided

Proviso.

that no such application for the ejectment of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated ticca zur-i-peshgee or the like, in which an advance has been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court.

† (Section XX of the original Bill.)

Measurement of lands.

XXVI.† *When rent is payable by an under-tenant or ryot at a certain rate or rates according to the quantity of land held or cultivated by him, or when any written engagement conditioned for the payment of a certain amount of rent on account of land held or cultivated by an under-tenant or ryot has expired or become cancelled by the sale for arrears of revenue or rent of the estate or tenure in which the land is situate, the person to whom the rent is payable has a right to measure such land for the purpose of ascertaining the quantity of land actually held or cultivated by such under-tenant or ryot, and every proprietor of an estate or tenure has a right of making a general survey or measurement of the lands comprised in such estate or tenure unless restrained from doing so by express engagement with the occupants of the lands. If any person*[1]

If the proprietor of an estate or tenure

intending to measure any land which he has a right to measure is opposed in making such measurement by the occupant of the land, or if any *under-tenant or* ryot,[2]

or cultivator

having received notice of the intended mea-

Bill as amended and passed.

surement of land held or cultivated by him which is liable to such measurement, refuses to attend and point out such land,[1] *such person* may make application to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act, and shall pass an order either allowing or disallowing the measurement, and, if the case so require, enjoining or excusing the attendance of any such *under-tenant* or ryot.[2] *If any under-tenant or ryot after the issue of an order enjoining his attendance neglects to attend, it shall not be competent to him to contest the correctness of the measurement made in his absence.*

[1] the proprietor of the estate or tenure

[2] or cultivator.

Registry of transfer of talooks, &c.

XXVII. All dependent talookdars and other persons possessing a permanent transferable interest in land intermediate between the zemindar and the cultivator are required to register, in the sherishteh of the zemindar or superior tenant to whom the rents of their talooks or tenures are payable, all transfers of such talooks or tenures, or portions of them, by sale, gift or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every zemindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and all such successions and divisions. If any zemindar or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferree or successor may make application to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act, and if no sufficient grounds are shown for the refusal, shall pass an order enjoining the zemindar or superior tenant to admit to registry and otherwise give effect to such transfer or succession.

Proviso.

Provided that no zemindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the zemindar or superior tenant.

Applications to dispossess grantees of land exempt from revenue.

XXVIII.* So much of section X, Regulation XIX, 1793, *Section X, Regulation XLI, 1795, Section VI, Regulation XXXI, 1803, Section XXI, Regulation VIII, 1805, and Section XXIV, Regulation XII, 1805,* as authorizes and requires proprietors and

* (Section XXI of the original Bill.)

Bill as amended and passed.

farmers of estates and dependent talooks, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the[1] *dates specified in the said sections,* of their own authority *to collect the rents of such land,* and to dispossess the grantees of the proprietary right in[2] *the* land and to re-annex it to the estate or talook in which it may be situate, is repealed; and any proprietor or farmer who may desire to *assess any such land or to* dispossess any such grantee shall make application to the Collector, and[3] *such application shall be dealt with as a suit under the provisions of this Act. Every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued. If such period has already elapsed, or will elapse within two years from the date of the passing of this Act, such suit may be brought at any time within two years from such date.*

[1] 1st December 1790

[2] such

[3] the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. But nothing contained in this Act relative to the limitation of suits shall be held applicable to such applications.

Suits by or against Surburakars or tuhseeldars of estates held khas.

XXIX. All suits which, under the provisions of this Act, may be brought by or against zemindars or other persons in the receipt of the rent of land, may be brought by or against surburakars or tuhseeldars of estates held under khas management, whether such estates are the property of Government, or of individuals. If the Collector or the surburakar or tuhseeldar of any such estate in the Provinces of Bengal, Behar, and Orissa proceed against any defaulting ryot or under-tenant of such estate under the powers vested in him by section XXV, Regulation VII, 1799, and not according to the provisions of this Act, such ryot or under-tenant may contest the demand on account of which he is so proceeded against by suit in the Civil Court.

(Section XXII of the original Bill.)

Time for commencement of suits generally.

XXX.* Except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action.

† (Section XXIII of the original B

Time for commencement of suits for grant of pottahs, &c.

XXXI.† Suits for the delivery of pottahs or kubooliyets and for the determination of the rates of rent at which such pottahs or kubooliyets are to be delivered, may be instituted at any time during the tenancy.[4]

[4] But no ryot or cultivator shall be entitled to claim an abatement of the rent previously paid by him, although such rent may be in excess of the rate to which he would be liable under section III of this Act if he have paid such rent for three years previous to the institution of the suit.

Bill as amended and passed.

XXXII.* Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal[1] year, *or from the last day of the month of Jeth of the Fusli or Willayuttee year* in which the arrear claimed shall have become due. For arrears of rent due at the passing of this Act, suit shall be brought within three years after the passing of this Act,[2] *or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire. Provided that, if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under section XIII, and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengal year or of the month of Jeth of the Fusli or Willayuttee year, on account of which such enhanced rent is claimed.*

Time for the commencement of suits for arrears of rent.

Proviso.

* (Section XXIV of the original Bill.)

[1] or Fusli

[2] but nothing in this section shall be held to enlarge the period now allowed by law for the institution of any such suit.

XXXIII.† Suits for the recovery of money in the hands of an agent or for the delivery of accounts or papers by an agent, may be brought at any time during the agency or within one year after the determination of the agency of such agent, or in the case of claims now existing within one year after the passing of this Act[3] *or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire. Provided that, if the person having the right to sue shall, by means of fraud, have been kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person; but no such suit shall in any case (except the case of claims now existing as aforesaid) be brought at any time exceeding three years from the termination of the agency.*

Time for the commencement of suits against agents for money, papers, or accounts.

Proviso.

† (Section XXV of the original Bill.)

[3] but nothing in this section shall be held to enlarge the period now allowed by law for the institution of any such suit.

XXXIV.‡ Suits under this Act shall be instituted by presenting to the Collector a plaint or statement of claim which shall contain the name, description, and place of abode of the plaintiff; the name, description, and place of abode of the defendant, so far as they can be ascertained; the sub-

Mode of instituting suits. Form of plaint or statement of claim.

(Section XXVI of the original Bill.

stance of the claim, and the date of the cause of action.

Statement by whom to be presented.

XXXV. The statement of claim shall be presented by the plaintiff, or by an authorized agent of the plaintiff who has personal knowledge of the facts of the case, or by an agent who shall be accompanied by a person who has such knowledge.

Verification of statement.

XXXVI. The statement of claim shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following or to the like effect:

I, A. B., do declare that the above statement is true to the best of my knowledge and belief.

Punishment for false verification.

If the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

* (Section XXVII of the original Bill.)

Statement of claim to be written on stamped paper.

XXXVII. In suits for the recovery of arrears of rent or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court. In all other suits* the statement[1] shall be written on paper bearing a stamp of the value of eight annas.[2] No stamp shall be required in respect of[3] *the production or filing of any document, or the summoning of any witness, or of any application for* the execution of any order or judgment passed *in a suit under this Act.*

[1] of claim

[2] but if the Collector be satisfied of the inability of the plaintiff to pay for a stamp, he may receive such statement on plain paper.

[3] any petition or other proceeding connected with the suit or with

No stamp duty to be required for filing documents, &c.

† (Section XXVIII of the original Bill.)

Documentary evidence to be produced by plaintiff.

XXXVIII.† If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Collector at the time of presenting his statement of claim. Unless such document be delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

If plaintiff require production of document from defendant.

XXXIX. If the plaintiff require the production of any document in the possession or power of the defendant, he may at the time of presenting his statement of claim, deliver to the Collector a description of the document

Bill as amended and passed.

in order that the defendant may be required to produce the same.

XL.* If the suit be for the recovery of an arrear of rent, the statement shall specify the name of the village *and estate*, and of the pergunnah or other local division in which the land is situate; *and if the arrear is alleged to be due from any ryot, the quantity of land, and where fields have been numbered in a Government Survey, the number of each field*, the yearly rent of the land, the amount (if any) received on account of the year for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due.[1]

Form of plaint in suits for arrears of rent.

* (Section XXIX of the original Bill.)

[1] If the suit be for an arrear alleged to be due from any ryot or cultivator, the plaintiff, in addition to any other documents upon which he may rely in support of his claim, shall produce the jumma-wasil-bakee account of the village or tenure of the year preceding that for which the arrear is claimed, if the same be not already filed in the Collector's Office; but this rule shall not be held applicable to the case of an auction purchaser or other person who, by reason of his having recently acquired possession of the village or tenure, or for any other cause may, in the judgment of the Collector, be unable to produce the said account.

XLI.† If the suit be for the ejectment of *a*[2] ryot,[3] farmer, or tenant, from any land, farm, or tenure, or for the recovery of the occupancy or possession of any land, farm, or tenure, the statement shall describe (as circumstances may require) the extent, situation, and designation of the same; and if necessary for the identification of the land, shall set forth the boundaries of such land.

Form of plaint in suits for ejectment of ryot, &c., or for recovery of occupancy or possession of land, &c.

† (Section XXX of the original Bill.)

[2] any

[3] or cultivator

[*Note.*—For Sections XXXI to XXXIV of the original Bill, see Sections XLIX to LII of the amended Bill.]

XLII. *If the statement of claim do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Collector may return the statement to the plaintiff, or at his discretion allow it to be amended.*

Statement may be returned or allowed to be amended.

XLIII.‡ *If the statement of claim be in proper form, the Collector, except as otherwise hereinafter specially provided,* shall direct[4] the issue of a summons to the defendant, and if the plaintiff require the personal attendance of the defendant, and satisfy the Collector that such personal attendance is necessary, or the Collector of his own accord require such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons, otherwise the summons shall order the defendant to appear personally or by an agent duly au-

Issue of summons; personal attendance of defendant may be required.

‡ (Section XXXV of the original Bill.)

[4] In all other cases the Collector

thorized on his behalf, who has personal knowledge of the subject, or who shall be accompanied by a *person*[1] who has such personal knowledge.

[1] witness.

* (Section XXXVI of the original Bill.)

XLIV.* The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held, and the summons shall order the defendant to produce any document which he may have in his possession, of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence. It shall also enjoin him to bring with him his witnesses if they are willing to attend without issue of process; and shall be in the form (*A*)[2] contained in the Schedule to this Act, or to the like effect.

The day to be specified in the summons how to be fixed. Defendant to be ordered to produce necessary documents, and to bring witnesses willing to attend without process.

[2] C.

† (Section XXXVII of the original Bill.)

XLV.† [3] The summons shall be served by delivering a copy of the summons[4] to the defendant personally when practicable; or if the summons cannot be served on the defendant personally, by affixing a copy of *it*[5] to some conspicuous part of his usual place of abode, and also affixing[6] *a copy* of the same in the Collector's Office.

[3] A copy of the statement of claim shall be sent with the summons, and

[4] and of the statement

Summons how to be served.

[5] the summons and a copy of the statement

[6] copies

‡ (Section XXXVIII of the original Bill.)

XLVI.‡ If the summons be served personally, the Nazir shall endorse on the summons the fact of such service. If personal service be not effected, the Nazir shall endorse on the summons the reason of not serving it personally, and how it has been served.

Endorsement by Nazir if summons has been personally served or not.

§ (Section XXXIX of the original Bill.)

XLVII.§ If the usual place of abode of the defendant be in another district, the summons, together with the cost of the service thereof, shall be sent by[7] *the public post* to the Collector of such District, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the Officer by whom it was transmitted to him.

Execution of process in another district.

[7] Dâk

|| (Section XL of the original Bill.)

XLVIII.|| The amount of the cost of serving the summons, or if a warrant be[8] *issued as provided in the next succeeding section*, of serving the warrant, shall in all cases be deposited in Court upon the same day or the day next following that on which the plaint or statement of claim is presented to the Collector.[9] If the said amount be not so deposited (except in cases in which the Collector may allow the issue of summons free of cost under the discretion reserved to

Cost of serving summons or warrant to be deposited in Court.

[8] applied for

[9] And

Bill as amended and passed.

him in Section[1] CXLVI), the case shall not be brought on the file of suits: but *in such case* the plaintiff may present another plaint at any time within the period allowed by the rules for the limitation of actions.

[1] CXXXI.

[*Note.*—For Section XLI of the original Bill, see Section LIX of the amended Bill.)

Warrant of arrest in what cases to be issued.

XLIX.* [2] *If* in any suit against an under-tenant or[3] *ryot* for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers, or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, *such defendant being resident within the district in which the suit is instituted*, he shall present with his statement of claim an application for the issue of such warrant. When such application is presented, the Collector shall examine the plaintiff or his agent *on his oath or affirmation or otherwise according to the law for the time being in force in relation to the examination of witnesses*, and inspect the documents adduced by him in support of his claim, and if there be *primâ facie* grounds for believing the claim to be well-founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim,[4] the Collector may issue a warrant for the arrest of the defendant. *The Collector shall fix a reasonable time for the return of the warrant which*[5] shall be in the form[6] (B) contained in the Schedule to this Act or to the like effect, and[7] *the Officer entrusted with the service of the warrant shall at the time of arresting the defendant deliver to him* a notice addressed to the defendant[4] (*which shall be in the form* (*C*) *in the Schedule or to the like effect*) *containing the particulars of the claim, and requiring the defendant*, if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence. But no such warrant shall be issued in a suit for arrears of rent due in respect of a dependent talook or other transferable tenure, which, as hereinafter provided, is liable to sale in execution of any decree which may be passed in the case.

* (Section XXXI of the original Bill.)

[2] When

[3] cultivator

[4] Provided also the defendant be resident in the district in which the suit is instituted

[5] The warrant

[6] A.

[7] shall be accompanied by

[3] enjoining him

Procedure after arrest of defendant.

L.† If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Collector,[9] *and the Collector shall commit him to custody unless he deposit in Court* such sum as may be specified[10] *in the notice*.

† (Section XXXII of the original Bill.

[9] unless he forthwith deposit with the officer entrusted with the execution of the warrant

[10] therein

Procedure when defendant is brought before the Collector under warrant.

LI.‡ When a defendant is brought before the Collector under warrant, the Collector shall with all convenient speed

‡ (Section XXXIII of the original Bill.)

Bill as amended and passed.

[1] when a defendant appears on summons

[2] take security from

[3] before

[4] shall be fully executed,

proceed to try the case in the manner hereinafter provided[1]; and if the suit cannot be at once adjudicated, the Collector may, if he think fit,[2] *require* the defendant *to give security* for his appearance whenever the same may be required at any time whilst the suit is depending or[3] *until execution of* the final decree which may be passed thereon,[4] and may commit the defendant to the Civil jail to be there detained until he shall furnish such security or deposit such sum as the Collector shall order. *The security bond shall be in the form (D) contained in the Schedule to this Act, or to the like effect.*

Form of security bond.

[*] (Section XXXIV of the original Bill.)

[5] the warrant of arrest cannot be served upon

Procedure if warrant of arrest cannot be served upon the defendant.

LII.* If the defendant[5] *cannot be arrested under the warrant*, the Collector, on the application of the plaintiff, shall either postpone the case for such period as he may think proper in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation to be affixed in his own Office and at the residence of the defendant fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice at the residence of the defendant. If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

Compensation for arrest applied for without reasonable cause.

LIII. If it shall appear to the Collector that the arrest of the defendant was applied for without reasonable cause, the Collector may in his decree award to the defendant such sum not exceeding one hundred rupees as he may deem a reasonable compensation for any injury or loss which the defendant may have sustained by reason of such arrest or of his detention in jail during the pendency of the suit.

[†] (Section LIII of the original Bill.)

Consequence of neither party appearing on the day of trial.

LIV.† If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial[6] *as hereinafter provided*, neither of the parties appear *in person or by an agent*, the case shall be struck off with liberty to the plaintiff to bring a fresh suit unless precluded by the rules for the limitation of actions.

[6] under section XLVI.

Bill as amended and passed.

LV.* If on any such day the defendant only appear, the Collector shall[1] *pass judgment against the plaintiff by default* unless the defendant admit the cause of action,[2] in which case the Collector shall proceed to give judgment for the plaintiff upon such admission without costs, provided that such judgment, if there be[3] *more than one defendant*, shall be only against the defendant who makes the admission.

If defendant only appear to dispute the demand, Collector shall pass judgment by default; but if defendant admit the claim, Collector shall decree upon such admission.

Proviso.

* (Section LIV of the original Bill.)

[1] dismiss the case with costs,

[2] or any part of it,

[3] several defendants

LVI.† If on any such day the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or oral evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may[4] *pass judgment* ex parte[5] against the defendant.

If plaintiff only appear, Collector may proceed *ex parte*.

† (Section LV of the original Bill.)

[4] make an

[5] decree

LVII.‡ If the defendant shall appear on any subsequent day to which the hearing of the suit may be postponed under the last preceding section, the Collector may upon such conditions, if any, as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

If defendant appear on a day to which the case is postponed, Collector may allow him to be heard in answer to the suit.

‡ (Section LVI of the original Bill.)

[*Note.*—For section LVII of the original Bill. see section LXVIII of the amended Bill.]

LVIII. *No appeal shall lie from a judgment passed ex parte against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But in all such cases if the party against whom judgment has been given*[6] shall appear, either in person or by agent, if a plaintiff within fifteen days from the date of the Collector's order, and if a defendant within[7] *fifteen days after any process for enforcing the judgment has been executed, or at any earlier period*, and shall show good and sufficient cause for his previous non-appearance, and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and alter or rescind the decree, according to the justice of the case. But no de-

Revival, reversal, and alteration of decrees *ex parte* or by default.

[6] If a decree be made *ex parte*, and the party against whom such decree sh ll have been made

[7] such time as the Collector shall deem reasonable under all the circumstances of the case, but before the decree shall have been finally executed,

[*Note.*—For section LIX of the original Bill, see section LXXIV of the amended Bill.]

cree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it. Bill as amended and passed

* (Section XLI of the original Bill.)

LIX.* *When both parties appear in person or by agent*[1] on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason to be recorded by the Collector, the Collector shall[2] proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other. If either of the parties be not bound to attend personally, any agent by whom he shall appear, or any[3] *person* who shall accompany such agent, shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally. *At the time of examination the defendant, if he think fit, may file a written statement of his defence.*

On appearance of parties, the parties to be examined by the Collector, and may cross-examine each other.

[1] Upon the appearance of the parties.

[2] call upon the defendant or his agent to make his defence. The defence shall be made either in writing in the official language of the district or verbally, and if made verbally shall be reduced into writing in the presence and under the personal superintendence of the Collector; after which the Collector shall

[3] witness

LX. The examination of the parties or their agents or such other persons as aforesaid shall be upon oath or affirmation or otherwise according to the law for the time being in force relative to the examination of witnesses. The substance of the examination shall be reduced to writing in the vernacular language of the Collector and filed with the record.

Examination of parties, &c.

† (Section XLII of the original Bill.)

LXI.† If either of the parties shall bring forward a witness on such day, the Collector[4] *may* take the evidence of such witness.

Witnesses to be examined.

[4] shall

‡ (Section XLIII of the original Bill.)

LXII.‡ If the defendant rely on any document in support of his defence, he shall deliver the same into Court at[5] the *first hearing of the suit;* and unless such document be so delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

Documentary evidence to be produced by defendant.

[5] time of making his defence

§ (Section XLIV of the original Bill.)

LXIII.§ If after the examination required by section[6] LIX and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Collector shall make his decree accordingly.

After examination, Collector may make his decree if no further evidence is required.

[6] XLI

‖ (Section XLV of the original Bill.)

LXIV.‖ If on such examination as aforesaid, the agent of either party be

Consequence of inability of agent to answer.

Bill as amended and passed.

unable to answer any material question relating to the case which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to answer as aforesaid shall attend in person on such day; and if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default or make such other order as he may deem proper in the circumstances of the case.

If necessary, Collector to record issue and to fix a day for hearing further evidence.

LXV.* If, on such examination as aforesaid, it appear that the parties are at issue on any question[1] upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.

* (Section XLVI of the original Bill.)

[1] of fact

Parties shall produce their witnesses on the day of trial; or Collector, on application of either party, shall issue summons for the attendance of a witness.

LXVI.† The parties shall bring forward their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply to the Collector in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Collector shall issue a summons requiring such witness to attend.

† (Section XLVII of the original Bill)

Rules regarding attendance, examination, &c., of witnesses.

LXVII.‡ The provisions of the Regulations and Acts, and all other rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witness and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the Civil Courts of the Presidency of Bengal, shall, except so far as the same may be inconsistent with the provisions of this Act, apply to, and be of equal force and effect in, suits under this Act.

‡ (Section XLVIII of the original Bill.)

[*Note.*—For Section XLIX of the original Bill, see Section LXXI of the amended Bill.]

Consequence of parties not appearing on the day fixed for the trial of any issue.

LXVIII.§ If on the day fixed for the trial of any issue[2] neither of the parties appear, the case shall be struck off under

§ (Section LVII of the original Bill.)

[2] under Section XLVI

[1] LIII.

[2] shall

[3] *ex parte*

[*Note.*—Section LVIII of the original Bill stands as Section LVIII of the amended Bill.]

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the conditions provided in Section[1] LIV. If, on any such day, one only of the parties appear, the issue[2] *may* be tried and determined,[3] *in the absence of the other party, upon such proof as may be then before the Court.*

Suits instituted or defended by Naib, Gomastahs, &c.

LXIX. When suits under this Act are instituted or defended by Naibs, Gomastahs, or other persons employed in the collection of rent or management of land in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such Naibs, Gomastahs, or other persons; and anything which by this Act is required or permitted to be done by a party in person, may be done by any such person as aforesaid. Processes served on any such person shall be as effectual, for all purposes in relation to the suit, as if the same had been served on the landholder in person, and all the provisions of this Act, relative to the service of processes on a party to the suit shall be applicable to the service of processes on such person.

Personal attendance of plaintiff or defendant not required in certain cases.

LXX. A plaintiff or defendant shall not be required to attend in person if of the female sex and of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

* (Section XLIX of the original Bill.)

L. If a defendant, summoned to attend personally, shall not attend in person in pursuance of the summons, he shall not be heard by an agent, unless the Collector be satisfied that there is a reasonable excuse for his non-attendance. A defendant who has evaded a warrant of arrest, and has not afterwards attended in person within the term of the proclamation prescribed in Section XXXIV, shall not be heard by an agent.

Employment of authorised agents or mookhtars.

LXXI.* Any party to a suit may employ an authorized agent or mookhtar to conduct the case on his behalf, but the appointment of such agent or mookhtar shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or any order of the Court; and no fee for any agent shall be charged as part of the costs of suit in any case under this Act.

† (Section LI of the original Bill.)

Collector may grant time or adjourn hearing.

LXXII.† The Collector may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also, from time to time, in order to the production of further proof or for other sufficient reason to be recorded by the Collector, adjourn the hearing or further hearing of any case in such manner as to him may seem fit.

‡ (Section LII of the original Bill.)

Collector may cause local enquiry to be made.

LXXIII.‡ The Collector may at any stage of a case cause a local enquiry and

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report respecting the matter in dispute to be made by any Officer subordinate to him, or by any other Officer of Government with the consent of the authority to whom such Officer is subordinate, or may himself proceed to the spot and make such local enquiry in person. The provisions of the law *for the time being* in force relative to local enquiries by Ameens or Commissioners under orders of the Civil Courts shall apply to any local enquiry made by any officer under this section, and, so far as they are applicable, to enquiries made by the Collector in person. In the latter case, the Collector, after completing the enquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.

LXXIV.* The defendant in any action under this Act may pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sum shall be paid to the plaintiff. If the defendant deposit less than the sum claimed and the plaintiff elect to proceed in the case, and ultimately recover nc further sum than shall have been paid intc Court, the plaintiff shall be charged witl any costs incurred by the defendant in th suit after such payment.

Defendant may pay money into Court in satisfaction of the demand.

If plaintiff elect to proceed and ultimately recover no further sum than that paid into Court, he shall be liable to the subsequent costs.

* (Section LIX of the original Bill.)

LXXV.† No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

No interest on deposits.

† (Section LX of the original Bill.)

LXXVI.‡ If on the trial of a suit for the delivery of a pottah instituted by a ryot[1] having a right of occupancy[2] the parties do not agree as to the term for which the pottah is to be granted, the Collector shall fix such term as under the circumstances of the case he may think just and proper. Provided that[3] the term shall not *in any case* be longer than ten years, and in estates not permanently settled shall not extend beyond the period for which the proprietor of the estate has engaged with Government. Provided also that, if the defendant be a farmer or other person having only a temporary interest in the land, the term of the pottah shall not extend

If on trial of suit for delivery of pottah, parties do not agree as to the time for which the pottah is granted, Collector to fix the time.

Proviso.

‡ (Section LXI of the original Bill.)

[1] or cultivator

[2] on payment of rent at pergunnah rates as explained in section III.

[3] in permanently-settled estates

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beyond the period of the continuance of such interest. For cultivators not having a right of occupancy the term of pottah shall be exclusively in the discretion of the person entitled to the rent of the land.

* (Section LXII of the original Bill.)

If in actions for rent a third person appear as claimant, he is to be made a party to the suit.

LXXVII. When in any suit between a landholder and a ryot or under-tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the ryot or under-tenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person or a person through whom he claims has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be enquired into and the suit shall be decided according to the result of such enquiry.* [1] Provided always that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

Proviso.

[1] If in an action for the recovery of arrears of rent the right to receive the rent of the land or tenure involved in the action is claimed by any third person as being in actual possession of the same, such third person shall be made a party to the suit, and the question of possession shall be put in issue, and the right of the plaintiff or of such third person to recover the rent of the land or tenure shall be determined according to the fact of possession

† (Section LXIII of the original Bill.)

Suits for ejectment or cancelment of lease.

LXXVIII.† Any person desiring to eject a ryot [2] or to cancel a lease on account of non-payment of arrears of rent, may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of suits for the ejectment of a ryot [3] or the cancelment of a lease, the decree shall specify the amount of the arrear,[4] *and if such amount, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed.*

[2] or cultivator

[3] or cultivator

[4] The ryot or cultivator or the lease-holder may at any time before the execution of the decree, stay the execution by paying such amount into Court, together with costs of suit.

‡ (Section LXIV of the original Bill.)

Judgment how to be pronounced.

LXXIX.‡ The Collector shall pronounce judgment in open Court.[5] *The judgment shall be written in the Vernacular language of the Collector and shall contain the reasons for the same, and shall be dated and signed by the Collector at the time when it is pronounced.*

[5] and the provisions of Act XXXIII of 1854 shall be applicable thereto.

§ (Section LXV of the original Bill.)

If person required by the decree refuse to grant pottah, Collector may do so.

LXXX.§ When a decree is given for the delivery of a pottah, if the person required by the decree to grant such pottah refuse or delay to grant the same, the Collector may grant a pottah in conformity

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with the terms of the decree under his own hand and seal, and such pottah shall be of the same force and effect as if granted by the person aforesaid.

LXXXI.* When a decree is given for the delivery of a kubooliyet, if the person required by the decree to execute such kubooliyet shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person, and a copy of the decree under the hand and seal of the Collector shall be of the same force and effect as a kubooliyet executed by the said person.

Refusal of person to execute kubooliyet as required by the decree.

* (Section XLVI of the original Bill.)

LXXXII.† If the decree be for the ejectment of any ryot[1] from land occupied by him, or for the re-instatement of any ryot[2] in the occupancy of land from which he has been ejected, the decree shall be executed by[3] *giving* the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy.[4] If any opposition is made to the execution of[5] *the order for giving such possession or occupancy by the party against whom the order is made*, the Magistrate, on the application of the Collector, shall give effect to the same.

Mode of executing decree for ejectment or re-instatement of ryot.

Punishment for obstructing execution.

† (Section XLVII of the original Bill.)

[1] or cultivator

[2] or cultivator

[3] an order issued to the Nazir to give

[4] and

[5] such order

LXXXIII.‡ If the decree be for the cancelment of any lease or the ejectment of any farmer or other person (not being an actual cultivator) or for the re-instatement of any farmer or other such person in the possession of a farm or tenure from which he has been ejected, the decree shall be executed by[6] proclaiming *the substance of the decree* to the cultivators or other occupants[7] *by beat of drum or in such other manner as may be customary, and affixing the same in some conspicuous place within or adjacent* to the farm or tenure.

Mode of executing decree for cancelment of a lease or for ejectment or re-instatement of a farmer or tenant.

‡ (Section XLVIII of the original Bill.)

[6] erecting a pole upon some place within or adjacent to the farm or tenure, and

[7] at some convenient place or places the substance of the decree in regard

LXXXIV.§ [8]If the decree be for arrears of rent or for money, papers, or accounts, and the defendant have been committed to jail or appear pursuant to the conditions of[9] *any* security *bond* given under Section *LI*,[10] *the Collector may order that he* be detained in or committed to the Civil Jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree.

In what case a judgment-debtor may be detained or imprisoned without issue of process of execution.

§ (Section LXIX of the original Bill.)

[8] Every decree for the payment of money or costs shall contain an order for immediate execution; and

[9] the

[10] XXXIII, he may without the issue of any process of execution

LXXXV.‖ If the judgment-debtor have given security for his appearance and be not present when

Liability of surety on failure to deliver judgment-debtor into custody.

[11] (Section LXX of the original Bill.)

Bill as amended and passed.

judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety. *If the decree be for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety for the sum due under the bond in the same manner as if a decree for that sum had been passed against the surety.*

* (Section LXXI of the original Bill.)

Issue of process of execution.

LXXXVI.* Process of execution may be issued against either the person or the property of a judgment-debtor; but process shall not be issued simultaneously against both person and property. Process of execution against the person or moveable property of a debtor shall be in the form (*E*) or (*F*)[1] contained in the Schedule to this Act, or to the like effect.

[1] D or E

† (Section LXXII of the original Bill.)

Application for execution against moveable property.

LXXXVII.† Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor, but if the creditor is unable to furnish such list he may apply for a general attachment of the debtor's effects to the amount of the judgment and costs. In either case the property to be seized shall be pointed out *to the officer entrusted with the execution of the process* by the creditor or his agent.

‡ (Section LXXIII of the original Bill.)

[2] process

[3] Court

[4] no warrant

[5] a longer period

How long warrant shall continue in force.

LXXXVIII.‡ *Every warrant*[2] of execution shall bear date on the day on which it is signed by the[3] *Collector* and[4] shall continue in force for[5] *such period as the Collector may direct, not being more* than sixty days calculated from such date.

§ (Section LXXIV of the original Bill.)

Second and successive warrants.

LXXXIX.§ Second and successive warrants of execution may be issued by order of the Collector on the application of the judgment-creditor, after the expiration of the period[6] fixed for the continuance in force of a previous warrant.[7]

[6] above

[7] no such warrant shall continue in force for a longer period than sixty days

|| (Section LXXV of the original Bill.)

After one year execution not to issue without notice.

XC.|| Process of execution shall not be issued upon any judgment without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year shall have elapsed from the date of the judgment or from the date of the last previous application for execution.

Bill as amended and passed.

XCI.* Execution on a judgment shall not issue against the heir or other representative of a deceased party without notice to such heir or other representative to appear and be heard.

Execution not to issue against heir or representative of a deceased party without notice.

(Section LXXVI of the original Bill.)

XCII.† No process of execution of any description whatsoever shall be issued, on a judgment under this Act, after the lapse of three years from the date of such judgment, *unless the judgment be for a sum exceeding five hundred rupees, in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Civil Courts.*

No process of execution to be issued three years after date of judgment.

† (Section LXXVII of the original Bill.)

XCIII.‡ If a warrant issue for taking in execution the body of any person,[1] the Officer[2] *charged* with the[3] *execution* of the warrant[4] shall bring him *with all convenient speed* before the Collector. If such person shall not then deposit in Court the full amount specified in the warrant or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor, *or satisfy the Collector that he has no present means of paying the debt*, the Collector shall send him to the Civil jail there to remain for such time as shall be directed by[5] *a* warrant *addressed to the keeper of the jail*, unless he shall in the meantime pay the full amount[6] for *the payment of which he is liable under the decree.* Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three calendar months when the amount decreed exclusive of costs does not exceed fifty rupees, or six calendar months *when such amount does not exceed five hundred rupees, or two years* in any other case. *If the decree against any person arrested under a warrant be for the delivery of papers or accounts and the papers or accounts shall not be delivered by him when he is brought before the Collector, such person may be committed to the Civil jail, there to remain for such time not exceeding six calendar months as the Collector shall direct, unless he shall in the meantime deliver the papers or accounts according to the terms of the decree.*

Warrant against the person.

Limit of imprisonment.

If arrest be for non-delivery of accounts.

‡ (Section LXXVIII of the original Bill.)

[1] The Nazir of the Court shall cause him to be seized, and unless such person shall immediately deposit with

[2] entrusted

[3] service

[4] the full amount specified therein the Nazir

[5] the

[6] specified therein

XCIV.§ Any person once discharged from jail shall not be imprisoned a second time under the same

No person to be imprisoned a second time under same judgment.

(Section LXXIX of the original Bill.)

judgment. *If the amount due under the decree do not exceed one hundred rupees, the Collector may declare such discharged person absolved from further liability under that decree. In other cases the*[1] discharge shall not extinguish the liability of[2] *the discharged* person under the decree, or exempt any property belonging to such person from attachment in execution of the same. Bill as amended and passed

[1] But such
[2] such

* (Section LXXX of the original Bill.)

XCV.* Any person applying for a warrant of arrest under Section[3] *XLIX* or suing out process of execution against the body of any person, shall deposit[4] *in* Court, at the time of issue of the warrant, diet-money for one month of thirty days at such rate as the Collector may direct, not exceeding two annas per diem, unless the Collector for any special reason direct that deposit be made at a higher rate, which shall not exceed four annas per diem.

Diet-money to be deposited at the time of issue of warrant.

[3] XXXI

[4] with the Nazir of the

† (Section LXXXI of the original Bill.)

XCVI.† Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, in failure of which the party confined shall be discharged.

Payment of diet-money in advance during imprisonment.

‡ (Section LXXXII of the original Bill.)

XCVII.‡ All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit, and any diet-money not so spent shall be returned to the person who deposited the same.

Diet-money to be costs in suit.

§ (Section LXXXIII of the original Bill.)

XCVIII.§ In executing a writ of execution against the moveable property of a debtor liable under this Act, the[5] *Officer charged with the execution of the writ* shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation specifying the day upon which the sale is intended to be held, together with a copy of the said list at the intended place of sale and at the residence of the debtor. A copy of the said proclamation and list shall be transmitted to the Collector and shall be affixed in his Office.

List of property to be prepared and proclamation of sale to be published, &c.

[5] Nazir

|| (Section LXXXIV of the original Bill

XCIX.|| No sale of any moveable property taken in execution shall be made until after the end of ten days next following the day on which such property may have been so taken. Until such sale the property shall be deposited[6] in some fit place or it may remain in custody of some fit person approved by the[7] *Officer executing the writ.* The provisions of sections[8] *CXXIX to CXXXIII,*

Custody and sale of moveable property taken in execution.

[6] by the Nazir

[7] Nazir.

[8] CXIV to CXVIII.

Bill as amended and passed.

so far as the same are applicable, shall be applied to sales under this section.

C.* If before the day fixed for the sale a third party appear before the Collector and[1] claim a right or interest in any of the moveable property taken in execution, the Collector *shall examine such party or his agent on oath or affirmation or otherwise, according to the law for the time being in force relative to the examination of witnesses, and if he see sufficient reason for so doing* may stay the sale of such property.

Collector may stay sale of moveable property seized if a third party claim any interest therein.

*(Section LXXXV of the original Bill.)

[1] by petition supported by his oath or affirmation

CI.† The Collector shall adjudicate upon such claim and make such order between the claimant and the plaintiff and defendant in the original suit as shall seem fit. In trying such claim the Collector shall be guided by the rules contained in this Act so far as they may be applicable.

Collector to adjudicate such claims.

† (Section LXXXVI of the original Bill.)

CII.‡ If the claimant shall fail to establish his right to the property taken in execution, the Collector at the time of disposing of the case may award to the judgment-creditor against such claimant as part of the costs such sum as he may consider sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

Claimant failing to establish his right liable to pay compensation to judgment-creditor.

‡ (Section LXXXVI of the original Bill.)

CIII.§ No appeal shall lie from any order passed by the Collector under the two last preceding sections. But the party against whom the same may be given shall be at liberty to bring a suit in the Civil Court to establish his right at any time within one year from the date of the order; provided that, if the order be for the sale of the property, the suit shall *not be for the recovery of the property, but shall* be for damages against the judgment-creditor by whom the property was brought to sale.

No appeal from order of Collector under the two last preceding sections.

Proviso.

§ (Section LXXXVIII of the original Bill.)

CIV.‖ No irregularity in publishing or conducting a sale of moveable property under an execution shall vitiate such sale, but this rule shall not be held to deprive any person who may sustain damage by reason of such irregularity from recovering such damage by action in the Civil Court; provided such action be brought within one year from the date of sale.

Sale not vitiated by irregularity in publishing or conducting the same.

Proviso.

‖ (Section LXXXIX of the original Bill.)

(Section XC of the original Bill.)

Bill as amended and passed.

Sale of transferable tenures in execution of decrees for arrears of rent.

CV.* If the decree be for an arrear of rent due in respect of an under-tenure, which by the title-deeds or the custom of the country is transferable by sale, the judgment-creditor may make application for the sale of the tenure, and the tenure may thereupon be brought to sale in execution of the decree, according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in[1] *any law for the time being in force.* But no such application shall be received when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor, so long as such warrant remains in force. If after sale of an under-tenure any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the debtor, *and any such immoveable property may be brought to sale in the manner provided in Section CX of this Act.*

† (Section XCI of the original Bill.)

If third party claim to be the lawful possessor of such under-tenure, Collector to stay the sale and to enquire into and adjudicate upon the claim.

CVI.† If before the day fixed for the sale of any such under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of such under-tenure, a third party appear before the Collector, and[2] allege that such third party and not the person against whom the decree has been obtained, is the proprietor of such under-tenure, and was in lawful possession of the same at the time when such decree was obtained,[3] *the Collector shall examine such party in the manner provided in Section C for the examination of third parties, and if he see sufficient reason for so doing, and such party* shall deposit in Court the amount of the decree or give sufficient security for the same, the Collector shall stay the sale and proceed to enquire into and adjudicate into the claim. *Provided that no transfer of an under-tenure which, by the provisions of this Act or any other law for the time being in force, is required to be registered in the sherishtah of the zemindar or superior tenant shall be recognized unless it have been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Collector.*

Act of

on oath or affirmation

[3] and

Proviso.

‡ (Section XCII of the original Bill.)

Mode of adjudicating such claims.

CVII.‡ In trying such claim the Collector shall be guided by the rules contained in this Act, so far as the same may be applicable, and the judgment passed by the Collector on such claim shall *not* be subject to[4] *appeal, but the party against whom*

[1] the same rules in respect of appeal as a judgment in a suit instituted under this Act.

Bill as amended and passed.

it is given may bring a suit in the Civil Court to establish his right at any time within one year from the date of the judgment.

CVIII. * If a decree is given in favour of a sharer in a joint undivided estate, dependent talook, or other similar tenure for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate or talook or tenure, application for the sale of such under-tenure shall not be received unless execution shall have been first taken out against any moveable property which the judgment-debtor may possess within the district in which the suit was instituted and the sale of such property, if any, shall have proved insufficient to satisfy the judgment. In such case such under-tenure, if of the nature described in section[1] *CV*, may be brought to sale in execution of the decree in the same manner as any other immoveable property may be sold in execution of a decree for money under the provisions of the two next following sections.

Execution of decrees given in favour of sharers in undivided estates or tenures.

* (Section XCIII of the original Bill.)

[1] XC.

CIX. † In the execution of any decree for the payment of money under this Act not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the district in which the suit was instituted, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor.

In all cases of decrees for money, if judgment cannot be satisfied by sale of debtor's moveable property, execution may be had against his immoveable property.

† (Section XCIV of the original Bill.)

CX. ‡ If the immoveable property against which execution is applied for be a house[2] or other building, process shall be issued in the same manner as for the attachment and sale of moveable property, and the provisions of sections *XCVIII and XCIX*[3] shall be applicable to the execution of such process. If the property be a saleable under-tenure, it shall be sold under the provisions of[4] *the law for the time being in force* applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof. If the property be an estate or a share of an estate, it shall be sold under the rules in force for the sale of[5] *estates* for the recovery of demands recoverable by the same process as arrears of land revenue.

Mode of executing process if immoveable property be a house or other building.

If it be a saleable under-tenure.

If it be an estate or a share of an estate.

‡ Section XCV of the Original Bill.)

[2] shop

[3] LXXXIV.

[4] Act of

[5] such property

Bill as amended and passed.

* (Section XCVI of the original Bill.)

CXI. * If, before the day fixed for the sale of any immoveable property as aforesaid, objection shall be offered to the sale on the ground of such property not belonging to the judgment-debtor, and consequently not being liable to be sold in execution of a decree against him, the Collector *shall examine the party making the objection in the manner prescribed in Section C for the examination of third parties, and* if satisfied that there is sufficient ground for so doing, shall stay the sale and proceed to enquire into and adjudicate upon the objection, in the same manner, and subject to the same right of [1] *suit by the party against whom judgment may be given,* as is provided in Section [2] *CVII.*

Consequence of objection being offered before the sale of any immoveable property.

[1] appeal

[2] XCII.

† (Section XCVII of the original Bill.)

CXII. † The produce of the land is held to be hypothecated for the rent payable in respect thereof; and when an arrear of rent as defined in Section[3] *XX* of this Act is due from any cultivator of land, the zemindar, lakherajdar, farmer, dependent talookdar, under-farmer, or other person entitled to receive rent immediately from such cultivator, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due under the following rules. ‡ Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land[4] *for the rent of which security has been given,* shall not be liable to distraint.[5] *Provided also that no sharer in a joint estate, dependent talook, or other tenure in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorized to collect the rents of the whole estate, talook, or tenure, on behalf of all the sharers in the same. Provided further that in putteedaree estates situate in districts under the Government of the Lieutenant-Governor of the North-Western Provinces, distraint shall be made only through a Lumberdar.*

Produce of the land to be held hypothecated for the rent.

[3] XIII.

Arrears of rent may be recovered by distraint under the following rules.

‡ (Section XCVIII of the Original Bill.)

Cultivators who have given security to be exempt from distraint.

[4] occupied by such cultivator

[5] for any arrear of rent that may accrue due in respect of such land.

Proviso.

Proviso.

§ (Section XCIX. of the original Bill.)

[6] After the lapse of one year from the time when this Act comes into operation, distraint shall be lawful only when a kabooliyet has been executed or a decree obtained under Section LXVI in respect of the rent for the recovery of which distraint is made.

CXIII. §[6] Distraint shall not be made for any arrear which has been due for a longer period than one year; *nor for the recovery of any sum in excess of the rent*

No distraint in certain cases.

Bill as amended and passed.

payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.

CXIV.* The power of distraint vested by Section[1] *CXII* in zemindars and other persons entitled to receive rent from cultivators of land, may be exercised by managers under the Court of Wards, Surburakars, *and Tuhseeldars* of estates held under khas management, and other persons lawfully entrusted with the charge of landed property; and also by the Naibs, Gomashtahs, and other agents employed by any such persons as aforesaid in the collection of rent if expressly authorized by power-of-attorney in that behalf. Provided that, if any illegal act is committed by any such Naib, Gomashtah, or other agent[2] *under color of* the exercise of the said power, the persons employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

Power of distraint to be exercised by managers under the Court of Wards, &c.

Proviso.

* (Section C of the original Bill.)

[1] and CVII.

CXV. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act. But no such crops or products other than the produce of the land in respect of which an arrear of rent is due or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

Standing crops and crops gathered but not stored liable to distraint.

CXVI.† Before or at the time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter, or if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.[3]

Defaulter to be served with a written demand, &c., before or at the time of distraint.

† (Section CII of the original Bill).

[3] in the presence of witnesses who shall sign a certificate of the notice and account having been so affixed.

CXVII.‡ Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as

Distress to be proportionate to the arrear if not paid or tendered.

‡ (Section CIII of the original Bill).

List of property to be distrained to be served on owner.

aforesaid of value proportionate to the amount of the arrear with costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or if he be absent affix it at his usual place of residence.[1]

[1] Except so far as may be necessary for the due preservation of the distrained property, the same shall not be removed from the place where the distress is made, but shall there remain in the charge of some person appointed by the distrainer for the purpose.

Standing crops, &c., when attached, to be reaped and stored by the cultivator, or, if he neglect to do so, by the distrainer.

CXVIII.* [2]Standing crops and other ungathered products[3] may, notwithstanding the[4] *distraint*, be reaped and gathered by the cultivator, and may be stored in such granaries or other places as are commonly used by him for the purpose. If the cultivator neglect to do so, the distrainer[5] *shall* cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.[6] *In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose. Crops or products which from their nature do not admit of being stored, may be sold before they are cut or gathered, under the rules hereinafter provided; but in such case the distraint shall be made at least twenty days before the time when the crops or products or any part of the same would be fit for cutting or gathering.*

(Section CI of the original Bill.)

[2] When

[3] of the earth are distrained, the distress shall be made at or about the time when such crops or products are ready to be reaped or gathered and such crops and products

[4] distraint

[5] may

[6] No crops or products other than the produce of the land in respect of which an arrear of rent is due and no other property whatsoever shall be liable to distraint under this Act.

Distrainer may apply for aid to the Collector upon occasion of resistance made or apprehended.

CXIX.† [7]If a distrainer shall be opposed, or shall apprehend resistance, and shall desire to[8] *obtain the assistance of a public Officer, he may apply to the Collector, and the Collector may, if he thinks necessary, depute an Officer to support the distrainer in making the distraint.*

† (Section CIV of the original Bill.)

[7] Distress shall be made between sun-rise and sun-set; and distrainers are authorized to force open any golah, granary, or other building, and to enter any dwelling-house, the door of which may be open, for the purpose of attaching any property as aforesaid which may be lodged therein.

[8] force open the door of a dwelling-house for the purpose of attaching property as aforesaid, he shall make application to the Police Darogah, and thereupon the Darogah shall proceed as directed in Section XXVII of Regulation XX 1817.

Persons empowered to distrain may give written authority to their servants to do so.

CXX.‡ When any person empowered to distrain property under section[9] *CXII* or Section[10] *CXIV*, shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority (which may be on plain paper) for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

‡ (Section CV of the original Bill.)

[9] and CVII.

[10] C.

Distress to be withdrawn if defaulter tender payment of arrear and expenses of attachment prior to the day of sale.

CXXI.§ If at any time after property has been distrained, and prior to the day fixed for its being put up to sale as hereinafter provided, the owner of the property shall tender payment of the arrear de-

§ (Section CVI of the original Bill.)

Bill as amended and passed.

manded of him and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

CXXII.* Within five days from the time of[1] *the storing of any distrained crops or products, or if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress,* the distrainer shall apply for sale of the same to the Civil Court Ameen, or other Officer authorized to sell property in satisfaction of decrees of the Civil Court within the circle in which the distrained property is situate, or to such other public Officer as the[2] *local Government* shall appoint for the purpose.

Application for sale.

CXXIII.† The application shall be in writing and shall contain an inventory or description of the property distrained, the name of the defaulter and his place of residence, the amount due, and the date of the distress, and the place in which the distrained property is deposited. Together with the application, the distrainer shall deliver to the Civil Court Ameen or other Officer the amount necessary for the service of a notice upon the defaulter as hereinafter provided.

Form of application.

Cost of notice upon defaulter to be deposited by distrainer.

CXXIV.‡ Immediately on receipt of the application the Civil Court Ameen or other Officer shall transmit a copy of it to the Collector; and shall serve a notice (which shall be in the form (G) contained in the Schedule to this Act, or to the like effect) on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice. He shall at the same time[3] *send to the Collector for the purpose of being put up in his Office,* and if in the North-Western Provinces, in the Cutcherry of the tahsildar, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited. The proclamation shall contain a description of the property, the demand for which it is to be sold, and the place where the sale is to be held.

Procedure by Civil Court Ameen, &c., on receipt of application.

* (Section CVII of the original Bill.)

[1] making the distress, or if the property distrained consist of standing crops or ungathered products, within five days from the storing thereof

[2] Lieutenant-Governor of Bengal, or the Lieutenant-Governor of the North-Western Provinces.

† (Section CVII of the original Bill.)

‡ (Section CIX of the original Bill.)

[3] put up in the kutcherry of the Munsif, or other Court or office to which he may be attached

Bill as amended and passed.

* (Section CX of the original Bill.)

Ameen to suspend sale on receipt of Collector's certificate of the institution of a suit.

CXXV*. If a suit shall be instituted before the Collector in pursuance of the aforesaid notice, the Collector shall transmit to the Civil Court Ameen or other Officer, or if so requested shall deliver to the owner of the distrained property, a certificate of the institution of such suit; and on such certificate being received by or presented to the Ameen or other officer, he shall suspend proceedings in regard to the sale of the distrained property.

† (Section CXI of the original Bill.)

Suit to contest distrainer's demand before issue of notice of sale.

CXXVI†. A person whose property has been distrained in the manner hereinbefore provided, may institute a suit to contest the demand of the distrainer immediately after the distraint of his property, and before the issue of notice of sale. When such suit is instituted, the Collector shall proceed in the manner prescribed in the last preceding section. If thereafter application for the sale of the property is made to the Civil Court Ameen or other Officer, he shall transmit a copy of the application to the Collector, and suspend further proceedings pending the decision of the case.

‡ (Section CXII of the original Bill)

Distress to be withdrawn on receipt of Collector's certificate that the owner has executed a bond with security to pay amount of decree with interest and costs.

CXXVII‡. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with security binding himself to pay whatever sum may be adjudged to be due from him with interest and costs of suit, and when such bond is executed the Collector shall give to the owner of the property a certificate to that effect, or if so requested shall serve the distrainer with notice of the same; and[1] upon such certificate being presented to[2] *the distrainer* by the owner of the property or served on him by order of the Collector[3] *the property shall be released from distraint.*

[1] the distrainer
[2] him
[3] shall immediately withdraw the distress.

§ (Section CXIII of the original Bill.)

On expiration of period fixed in the proclamation of sale, if institution of suit to contest distrainer's demand have not been certified, sale may be proceeded with.

CXXVIII.§ On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainer has not been certified to the Civil Court Ameen or other Officer in the manner hereinbefore provided, he shall, unless the said demand, with *such* costs of the distress [4] as shall be allowed by him, be discharged in full, proceed to sell the property or such part of it as may be necessary in the manner following.

[4] at such rate

Bill as amended and passed.

CXXIX.* The sale shall be held at the place where the distrained property is deposited, or at the nearest gunge, bazar, haut, or other place of public resort, if the Civil Court Ameen or other Officer should be of opinion that it is likely to sell there to better advantage. The property shall be sold by public auction in one or more lots as the Officer holding the sale may think advisable; and if the demand with the costs of distress and sale be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

Place and manner of sale of distrained property.

* (Section CXIV of the original Bill.)

CXXX.† If on the property being put up for sale a fair price in the estimation of the Officer holding the sale be not offered for it, and the owner of the property or some person authorized to act on his behalf apply to have the sale postponed until the next day, or the next market day, if a market be held at the place of sale, the sale shall be postponed until such day and shall be then completed at whatever price may be offered for the property.

If fair price be not offered, sale may be postponed to another day, and shall be then completed at whatever price may be offered.

† (Section CXV of the original Bill.)

CXXXI.‡ The price of every lot shall be paid for in ready money at the time of sale or as soon after as the Officer holding the sale shall think necessary; and in default of such payment the property shall[1] be put up again and sold. When the purchase money has been paid in full, the Officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Payment of purchase money.

‡ (Section CXVI of the original Bill.)

[1] forthwith

CXXXII.§ From the proceeds of the sale of distrained property the Officer holding the sale shall make a deduction at the rate of[2] *one anna in the rupee* on account of the costs of the sale, and shall transmit the amount to the Collector in order that it may be credited to Government. He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress and of the issue of the notice and proclamation of sale prescribed in Section[3] *CXXIV* to such amount as, after examination of the statement of expenses furnished by the distrainer, he shall think proper to allow. The remainder shall be applied to the discharge of the arrear for which the distraint was made with interest thereon up to the day of sale, and if there be any overplus it shall be delivered to the person whose property shall have been sold.

Proceeds of sale.

§ (Section CXVII of the original Bill.)

[2] ten per centum

[3] CIX

Bill as amended and passed.

* (Section CXVIII of the original Bill.)

Officers holding sales prohibited from purchasing.

CXXXIII.* Officers holding sales of property under this Act, and all persons employed by or subordinate to such Officers, are prohibited from purchasing either directly or indirectly any property sold by such Officers.

† (Section CXIX of the original Bill.)

All irregularities to be reported to the Collector.

Officer not to proceed to sale, if he find that defaulter has not received due notice.

CXXXIV.† Civil Court Ameens and other Officers as aforesaid are required to bring to the notice of Collectors any material irregularities committed by distrainers under color of this Act; and if in any case, on proceeding to hold a sale of property, the Civil Court Ameen or other Officer shall find that[1] the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, and the Collector shall direct the issue of another notice and proclamation of sale under Section[2] *CXXIV* or pass such other order as he may think proper.

[1] through the practices of the distrainer, or from any other cause,

[2] CIX

‡ (Section CXX of the original Bill.)

Recovery of expenses if Ameen proceeds to place of sale and no sale takes place.

CXXXV.‡ When a Civil Court Ameen or other Officer has proceeded to any place for the purpose of holding a sale and no sale takes place either for the reason stated in the last preceding section or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to the Civil Court Ameen or other officer, the charge of[3] *one anna in the rupee* on account of expenses shall be leviable and shall be calculated on the estimated value of the distrained property. If the demand of the distrainer be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property and may be recovered by the sale of such portion thereof as may be necessary. In every other case it shall be paid by the distrainer and recovered by[4] *attachment and sale of the property of the distrainer under the warrant of the Collector.* Provided always that in no case shall a larger amount than ten Rupees be recoverable under this section.

[3] ten per centum

[4] warrant under the hand of the Collector

§ (Section CXXI of the original Bill)

Proceedings of Civil Court Ameens, &c., subject to revision and orders of Collectors.

CXXXVI.§ All proceedings under this Act of the Civil Court Ameens and other officers as aforesaid shall be subject to the revision and orders of the Collectors, and the Collectors, with the sanction of the Boards of Revenue, may require the submission of such periodical reports and statements of business performed by the Civil Court Ameens and other Officers as may be thought necessary.

Bill as amended and passed.

CXXXVII.* When a suit has been instituted to contest the demand of a distrainer and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Collector shall issue an order to the Civil Court Ameen or other Officer authorizing the sale of the property, and on the application of the distrainer, which shall be made within five days from the receipt of such order by the Civil Court Ameen or other Officer, such Ameen or Officer shall publish a second proclamation in the manner prescribed in Section[1] *CXXIV*, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation; and unless the amount adjudged to be due with the costs of distress be paid intermediately, shall proceed to sell the property in the manner hereinbefore provided.

Second proclamation of sale.

* (Section CXXII of the original Bill.)

[1] CIX.

CXXXVIII.† In all suits instituted to contest the demand of a distrainer, the distrainer shall be required to prove the arrear in the same manner as if he had himself brought suit for the amount under the foregoing provisions of this Act. If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favor of the distrainer, and the amount may be recovered by sale of the property as provided in the last preceding Section if the distress has not been withdrawn, and if any balance remain due after such sale by execution of the decree against the person and any other property of the defaulter, or if the property have been released on security by execution of the decree against the person and property of the defaulter and of his surety. If, on the other hand, the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favor of the plaintiff as the circumstances of the case shall seem to require.

Procedure after institution of suit to contest distrainer's demand.

† (Section CXXIII of the original Bill.)

CXXXIX.‡ If any person shall claim as his own property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer and such other person, to try the right to the property, in the same manner, and under the same conditions as to the time of instituting the suit and to the consequent postpone-

Any person, whose property has been distrained for arrears of rent alleged to be due from another, may institute a suit against the distrainer, &c.

‡ (Section CXXIV of the original Bill.)

Bill as amended and passed

ment of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand. When any such suit is instituted, the property may be released upon security being given for the value of the same. If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer. If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may seem to require. Provided always that no claim to any produce of land liable to distraint under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.

Proviso.

* (Section CXXV of the original Bill)

Procedure if distrainer's right to distrain be disputed.

CXL.* If, in any case in which property has been distrained for an arrear of rent and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed by *or on behalf of* any person other than the distrainer[1] *on the ground of such other person being actually and in good faith in the receipt and enjoyment* of the rent of the land, such other person shall be made a party to the suit, and the question of[2] *the actual receipt and enjoyment of the rent by such other person before and up to the time of the commencement of the suit shall be enquired into, and the suit shall be decided according to the result of such enquiry.* Provided always that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

[1] as being in possession

[2] possession shall be put in issue and the right of either party to distrain for rent shall be determined according to the fact of possession.

† (Section CXXVI of the original Bill.)

Persons prevented from suing in time to save their property from sale, may sue for damages.

CXLI.† If any person, whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing suit to contest the demand or to try the right to the property as the case may be within the period allowed by Sections[3] *CXXIV* and *CXXIX* and his

[3] CIX and CXXIV.

Bill as amended and passed.

property is in consequence brought to sale, he may nevertheless institute a suit under this Act to recover damages for the illegal distress and sale of his property.

Also persons aggrieved by any illegal act of distrainer.

CXLII.* If any person empowered to distrain property or employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act, or if any distrained property shall be lost, damaged, or destroyed by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof, *or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act*, the owner of the property may institute a suit under this Act to recover damages for any injury which he may have thereby sustained.

* (Section CXXVII of the original Bill.)

Unlawful distraint.

CXLIII.† If any person not empowered to distrain property under Sections[1] *CXII* and *CXIV* of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distrain or sell or cause to be sold any property under color of this Act, the owner of the property may institute a suit under this Act to recover damages from such person for any injury which he may have sustained from the distraint or sale. The said person shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence in addition to any damages which may be awarded against him in such suit.

† (Section CXXVIII of the original Bill.)

[1] CXVII, &c.

Time for commencing suits for damages.

CXLIV.‡ Provided always that any suit which may be instituted under any of the *last* three[2] Sections shall be commenced within three months from the date of the occurrence of the cause of action.

‡ (Section CXXIX of the original Bill.)

[2] last preceding

Resistance of distraint.

CXLV.§ If any person shall resist a distraint of property duly made under this Act, or shall forcibly or clandestinely remove any distrained property, the Collector, upon complaint being made within fifteen days from the date of such resistance or removal, shall cause the person accused to be arrested, and if the offence be proved and the offender be the owner of the property, shall order him to be imprisoned in the Civil jail for six months, or until the whole arrear due to the distrainer with all expenses and costs shall sooner be paid or levied by distress and

§ (Section CXXX of the original Bill.)

Bill as amended and passed.

sale of the property of the offender under warrant of the Collector. If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred Rupees, or in default of payment thereof to imprisonment for a period not exceeding two months.

* (Section CXXXI of the original Bill.)

CXLVI.* Every process issued by a Collector under this Act shall be under the seal and signature of the Collector, and shall be served or executed by the Nazir or by[1] *such other Officer as the Collector may direct* at the cost of the party at whose instance it issued. The amount of such cost, and, in the case of summons to a witness, any sum required for the travelling expenses of such witness, shall be deposited in Court before the process is issued. Provided that, if in any case the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Service of process.

[1] an officer of his establishment

CXXXII. Whenever, in accordance with the provisions of this Act any notice, summons, proclamation or other process is served affixing a copy thereof to some part of the usual place of abode of the person named in the process, such service shall be attested by the signature of not less than three persons residing in the same neighbourhood, one of whom shall, if practicable, be the village chowkeydar or local Police Officer.

CXXXIII. When any of the offences described in Chapter X of the Penal Code is committed in contempt of the lawful authority of a Collector or other public servant duly exercised under the provisions of this Act, it shall be competent to the Collector to punish the offender for a contempt of Court, and to adjudge the punishment authorized by the clause applicable thereto.

† (Section CXXXIV of the original Bill.)

CXLVII.† *Any resistance or opposition to the lawful process of a Collector under this Act may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of Civil justice. When in any such case the offender is*[2] not present in Court, the Collector may summon him to answer to the charge, and if after due service of the summons he fail to attend, may issue a warrant for his apprehension. *Orders passed by Collectors under this Section shall not be deemed to be orders relating to the trial of suits or to the execution of decrees within the meaning of Section CLI.*

Resistance of process.

[2] In any such case as is referred to in the last preceding section, if the offender be

CXXXV. Whenever any such offence as is described in clause 39, Chapter XI, of the Penal Code is committed in contempt of the lawful authority of a Collector in any stage of a judicial proceeding under this Act, it shall be competent to the Collector to punish the offender as for a contempt of Court, and to adjudge the punishment authorized by the said clause.

‡ (Section CXXXVI of the original Bill.)

CXLVIII.‡ It shall be competent to the Collector to hold a Court for hearing and determining suits under this Act in any place within the limits of his district or local jurisdiction; provided that every hearing and decision shall be in open Court, and that the parties to the suit or their authorized agents shall have had due notice to attend at such place.

Collector competent to hold a Court in any part of his jurisdiction.

Proviso.

Bill as amended and passed.

Agents or mookhtars.

CXLIX. * Any person may practise as an agent or mookhtar in a Court held by a Collector under this Act without any formal license from the Collector. But it shall be competent to the Collector to prohibit any person, who has been convicted by a competent Court of a criminal offence, or who has been found guilty of fraudulent or dishonest conduct in the discharge of his duty as agent or mookhtar, to practise as an agent or mookhtar in his Court. When any [1] *agent or mookhtar is charged by the Collector or any other person with* fraudulent or dishonest conduct in the discharge of his duty,[2] the Collector shall proceed in the manner prescribed in Section IV, Act XVIII of 1852,[3] *or any other law for the time being in force for the trial of charges against pleaders.*

* (Section CXXXVII of the original Bill.)

[1] charge of

[2] is brought against an agent or mookhtar,

[3] and the order passed in the case shall be open to appeal to the superior Revenue authorities.

Powers of Deputy Collectors.

CL. † All the powers vested in the Collector by the preceding Sections of this Act may be exercised by any Deputy Collector in cases referred to him by a Collector, and in all cases without such reference, by any Deputy Collector *placed in charge of* any sub-division of a district; *and all applications and reports allowed or required by this Act to be made to the Collector may be made to any Deputy Collector having such local jurisdiction.*

† (Section CXXXVIII of the original Bill)

Collectors and Deputy Collectors to be subject to direction and control of the Commissioners and the Boards of Revenue.

CLI. ‡ In the performance of their duties under this Act the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners and the Boards of Revenue; and the Deputy Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate.[4]

‡ (Section CXXXIX of the original Bill.)

[4] Except as otherwise herein provided.

No appeal from orders of Collectors and Deputy Collectors in certain cases.

All orders passed by a Collector under this Act, *not being judgments in suits or orders passed in the course of suits and relating to the trial thereof or orders passed after decree and relating to the execution thereof,* shall be appealable to the Commissioner; and all *such* orders passed by a Deputy Collector shall be appealable to the Collector; but no judgment[5] of a Collector or Deputy Collector in any suit, and no order of a Collector or Deputy Collector[6] *passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.*

[5] or order

[6] in the execution of any decree under this Act, shall be liable to be reversed or altered unless the same is expressly declared to be open to revision or appeal by the provisions of this Act.

Time for presenting appeals from orders.

CLII. Every appeal against the order of a Collector shall be presented to the Commissioner within thirty days, and every appeal against the order of a Deputy

CXL. All orders which may be passed by a Collector under Sections CXXXIII and CXXXV shall be appealable to the Commissioner, and all such orders passed by a Deputy Collector shall be appealable to the Collector. In all such cases the order which may be passed in appeal shall be final and conclusive.

Bill as amended and passed.

Collector shall be presented to the Collector within fifteen days from the date of the order. Orders passed in appeal by a Commissioner or a Collector shall not be open to any further appeal, but the Board of Revenue or the Commissioner may call for any case, and pass such orders thereon as they may think proper.

* (Section CXLI of the original Bill.)

[1] XVII.

[2] XVIII.

[3] Fifty

[4] Officer holding the Court

[5] cultivator

[6] CXLIV & CXLV.

† (Section CXLII of the original Bill)

[7] Officer holding the Court

[8] or, if the case have been decided by a Deputy Collector, the Deputy Collector with the sanction of the Collector

CXLIII. When any such suit as aforesaid is decided by a Deputy Collector, the Collector on the application of either party, if preferred within 30 days from the date of the decision, may call for the record of the case, and if there have been substantial defect in the procedure or investigation, from which there may be strong probable grounds for presuming a failure of justice, the Collector may set aside the judgment of the Deputy Collector, and make such investigation into the merits of the case and pass such decision thereon as to him may seem fit. But no judgment of a Deputy Collector in any such suit shall be reversed or altered, nor shall a re-hearing be directed, on the ground that the decision of any question of fact is contrary to or not warranted by the evidence duly taken in the case.

CLIII. * In suits under Clauses 2, 4, and 7 of Section [1] *XXIII* and under Section [2] *XXIV* of this Act, *tried and decided by a Collector* if the amount sued for or the value of the property claimed does not exceed [3] *one hundred* Rupees, the judgment of the *Collector* [4] shall be final, and not open to revision or appeal except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a [5] *ryot* or tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in Sections [6] *CLX and CLXI* of this Act.

No appeal from any decree of Collector for money below 100 Rupees unless the decision involve some question of right to enhance rents or some question relating to a title to land.

CLIV. † In suits in which the judgment of the [7] *Collector* is final as provided in the last preceding Section, the Collector [8] may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of, or could not produce, at the time of trial.

In suits not open to appeal, Collector may grant a re-hearing upon the discovery of new evidence, &c.

CLV. When any such suit as aforesaid, in which if tried and decided by a Collector the judgment of the Collector would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Collector.

Appeal from decision of Deputy Collector.

Bill as amended and passed.

CLVI. The petition of appeal shall be written on stamp paper of eight annas value and shall be presented to the Collector within fifteen days from the date of the decree, provided that such time as may be requisite for procuring a copy of the decree appealed against shall not be reckoned as part of the fifteen days.

Petition of appeal to be on stamp paper, &c.

CLVII. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons. If, on the day fixed for hearing the appeal or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an agent, the appeal shall be dismissed for default. If the appellant shall appear and the respondent shall not appear in person or by an agent, the appeal shall be heard ex-parte.

Procedure in appeal.

CLVIII. If an appeal be dismissed for default of prosecution, the appellant may within fifteen days from the date of the dismissal apply to the Collector for the re-admission of the appeal, and if it shall be proved to the satisfaction of the Collector that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal.

Re-admission of appeal.

CLIX. After hearing the appeal the Collector shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final.

Judgment in appeal.

CLX.* In all suits other than those in which *when tried and decided by a Collector* the judgment of the[1] *Collector* is declared to be final[2] *or when tried and decided by a Deputy Collector an appeal is allowed to the Collector*, an appeal from the judgment of[3] *the Collector or Deputy Collector* shall[4] *lie* to the Zillah Judge *unless the amount or value in dispute exceed five thousand rupees, in which case the appeal shall lie to the Sudder Court.*

In what suits appeal to lie to Zillah Judge.

To Sudder Court.

* (Section CXLIV of the original Bill.)
[1] Officer holding a court under this Act
[2] by section CXLI.
[3] such officer.
[4] be open.

CLXI.† The petition of appeal shall be written on the stamp paper prescribed for appeals from the subordinate Civil Courts with reference to the amount or value of the property involved in the appeal; and the rules in force in regard to the time within which appeals

Rules regarding presentation and hearing of appeals.

† (Section CXLV of the original Bill.)

from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals *to the Zillah Judge or Sudder Court* under this Act.

Bill as amended and passed.

* (Section CXLVI of the original Bill.)

CLXII.* Suits under this Act shall be preferred in the Revenue Office of the District, or *when a Sub-division of a District has been placed under the jurisdiction of a Deputy Collector, in the Revenue Office of the* Sub-division in which the cause of action shall have arisen. *Provided always that the Collector may withdraw any suit from any Deputy Collector and try it himself, or refer it to another Deputy Collector.* If the lands comprised in any talook, farm, or other tenure, or any lands held under one lease or engagement or at one entire rent in respect of which arrears of rent may be due, are situated in more than one District or Sub-division, the District or Sub-division in which the greater part of such lands is situate shall be held to be the District or Sub-division in which the cause of action has arisen; and if any question shall be raised respecting the District or Sub-division in which the greater part of the lands is situate, the Board of Revenue, or if all the lands be situate in one District the Collector of the District shall decide the question, and such decision shall be conclusive on the point of jurisdiction.

Suits to be preferred in the Revenue Office of the District or Sub-division in which the greater part of the lands is situate.

† (Section CXLVII of the original Bill.)

CLXIII.† Except as provided in the last preceding Section, no Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the District to which he is appointed, by reason of such lands forming part of an estate the revenue of which is paid into the Treasury of the said District.

Except as above, Collector not to exercise jurisdiction in respect to lands situate beyond his district.

CLXIV. No Deputy Collector appointed under Regulation IX, 1833, of the Bengal Code shall exercise any judicial powers or other jurisdiction under this Act if entrusted with any Police functions.

Deputy Collector entrusted with Police functions, not to exercise judicial powers under this Act.

CLXV. Assistants to Collectors shall not exercise any powers under this Act unless invested by Government with the powers of Deputy Collectors, in which case they may exercise the powers hereby assigned to Deputy Collectors.

What powers to be exercised by Assistants to Collectors.

Bill as amended and passed.

CLXVI.* Nothing contained in this Act shall be held to affect the right vested in proprietors of land under direct engagements with Government, of bringing to sale for arrears of rent Putnee Talooks and other similar tenures under the provisions of Regulation VIII, 1819.

Saving of rights of proprietors in respect of Putnee Talooks, &c., under Regulation VIII, 1819.

CLXVII.† This Act shall commence and have effect from and after the first day of August 1859.

Commencement of Act.

CLXVIII.‡ The words "Civil Jail," *as used in this Act*, shall include the Civil Jail of the Zillah and any place appointed by the Executive Government for the confinement of prisoners by any Court constituted under this Act. The word "Nazir" shall include any Officer of a Court authorized to serve or execute its process. Unless there be something in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females.

"Civil Jail."

"Nazir."

Number.

Gender.

* (Section CXLVIII of the original Bill.)

† (Section CXLIX of the original Bill.)

‡ (Section CL of the original Bill.)

SCHEDULE.

FORM A.

FORM OF SUMMONS TO DEFENDANT.

No. (of suit) dated
In the Court of

A. B., Plaintiff.
[*Name, description, and address of plaintiff.*]

C. D., Defendant.
[*Name, description, and address of defendant.*]

Whereas the said A. B. has brought a claim against you in this Court for[1] (*here specify particulars of claim as given in the statement,*) you are hereby required to appear in person *in this Court on the day of* . [*if not specially required to appear in person, state,* " in person or by *an agent*[2] *who has personal knowledge of the subject, or who shall be accompanied by a person who has such knowledge*"] to answer the abovenamed plaintiff, and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by*

[1] a copy of the statement of claim is hereunto annexed, and

[2] in this Court on the —— day of ——

the plaintiff] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM B. (*See Section* 49.)

FORM OF WARRANT OF ARREST.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of *the Collector of*

Whereas the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant[1] before the Court[2] *on or before the day of to be dealt with according to law.*

Dated this day of 185 .

[1] forthwith

[2] unless he deposit with you or with the officer employed by you to serve this warrant the sum of [if the suit be for the delivery of papers, here specify the same]

FORM C. (*See Section* 49.)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[*Name, description, and address of plaintiff.*]

C. D., Defendant.

[*Name, description, and address of defendant.*]

Whereas the said A. B. has brought a claim against you in this Court for (*here specify particulars of claim as given in the statement*) and has obtained a warrant for your arrest[1], you are hereby required, *unless you admit the claim*, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

[1] a copy of the statement of claim is hereunto annexed, and

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FORM D. (*See Section* 51.)

FORM OF SECURITY BOND FOR APPEARANCE OF DEFENDANT.

Whereas A. B., plaintiff, has instituted a suit in the Court of the Collector of against C. D., defendant, and the said C. D. has been required to give

Bill as amended and passed

security for his appearance at any time when called on while the suit is depending and until execution of the decree, I, E. F., hereby declare myself surety for the said C. D.'s appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said C. D. may be liable under the decree. If the suit be for the delivery of papers or accounts specify some sum to be fixed by the Collector.

FORM E. (*See Section* 86.)

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of *the Collector of*

Whereas the said C. D. was directed by a decree of this Court, under date the day of 185 , to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to apprehend the said C. D., and[1] *to bring him with all convenient speed* before this Court to be dealt with accerding to law.

[1] unless the said C D shall pay you the sum of in satisfaction of the said decree and costs, and the sum of for the costs of executing this process to produce him

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FORM F. (*See Section* 86.)

WRIT OF EXECUTION AGAINST THE EFFECTS

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of *the Collector of*

Whereas C. D. was directed by a decree of this Court under date the day of 185 , to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said C. D. as (is described in the list annexed, and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said C. D., on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you

are hereby commanded to certify to me what you shall do by virtue of this warrant. Bill as amended and passed.

FORM G. (*See Section* 124.)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of Commissioner for sale of distrained property.

A. B., Distrainer.

[*Name, description and address of the owner of the property.*]

Whereas the said A. B. has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said A. B., or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 185 .

This Bill was passed in the Legislative Council on the 16th day of April 1859.

J. P. GRANT,
President.

Abstract of Proceedings of the Legislative Council of India, dated 23rd April 1859. Proceedings of the Legislative Council dated the 23rd April 1859.

MR. PEACOCK. MR. PEACOCK delivered to the Clerk of the Council his dissent and his reasons of dissent from the passing of the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

SIR CHARLES JACKSON. SIR CHARLES JACKSON also proposed to deliver his dissent from the passing of the Bill.

MR. CURRIE. MR. CURRIE said he doubted if the dissent of the Honorable and learned Judge could be received, and he would like to have the opinion of the Council on the subject. When the Honorable and learned Member opposite (Mr. Peacock) gave notice of his intention to record his dissent, he had not the opportunity of referring to the Standing Orders. He was not aware at the time that he should have, under Standing Order No. XCI, given notice of his intention to record his assent at the Meeting when the Bill was passed. He observed that, while Standing Order No. XCII allowed dissents "to be delivered before the expiration of the next Ordinary Meeting after the passing of the Bill," Standing Order No. XCIII allowed assents "to be delivered before the expiration of the second Ordinary Meeting after" the same. The object seemed obviously to have been to give to Members interested in the passing of a Bill an opportunity to answer the dissent. What he wished to know was, if he was precluded from recording his assent by his inadvertent omission, at the last Meeting, to give notice of his intention to do so, and if there were now any means of remedying the omission.

THE PRESIDENT. THE PRESIDENT said, that there could be no doubt upon the point of form. According to Standing Order No. XCI, no dissent or assent to a Bill could be recorded, unless by a Member who had given notice of his intention so to do at the Meeting at which the Bill was passed. In point of form, therefore,

Proceedings of the Legislative Council, dated the 23rd April 1859.

the Honorable Member for Bengal having omitted to give such notice, was not entitled to record his assent. But it was within the competency of the Council to suspend the Standing Order referred to.

SIR CHARLES JACKSON.

SIR CHARLES JACKSON said, he believed he stood in the same position as the Honorable Member for Bengal, as he had omitted to give notice of his intention to record his dissent.

THE PRESIDENT (MR. J. P. GRANT.)

THE PRESIDENT said, that the Honorable and learned Judge was precisely in the same position as the Honorable Member for Bengal. The Honorable and learned Member's (Mr. Peacock's) dissent might be read first, after which the Standing Orders might be suspended to enable other Honorable Members to record their dissent, or to give notice of their intention to record their assent before the rising of the next Ordinary Meeting of the Council.

MR. PEACOCK'S dissent.

MR. PEACOCK'S dissent was then read by the Clerk as follows:—

I dissent—

1*st*.—Because the Bill invests Collectors and other Revenue authorities with power to try the suits mentioned in Section XXIII, many of which will involve difficult questions, and are at present cognizable only by the Civil Courts of Judicature.

2*nd*.—Because it deprives the regular Courts of Civil Judicature of the jurisdiction which they now have to try any of the said suits, whereas such a measure is wholly uncalled for, and is especially inexpedient at a time when the procedure of the Civil Courts has just been rendered more simple and expeditious.

3*rd*.—Because the jurisdiction to be exercised by the Revenue authorities having been restricted to Collectors, Assistant Collectors invested by Government with the powers of Deputy Collectors, and to Deputy Collectors who by an amendment carried by a vote of this Council cannot at the same time exercise Police functions, the only Officers now existing, who, if the Bill pass, will have jurisdiction to try the suits in question, are not sufficiently numerous to prevent the necessity of parties and witnesses in numerous cases being compelled to travel to long distances far greater than would be necessary if the Civil Courts were allowed to retain the jurisdiction which they now possess, and because it will be necessary, if the great evil above contemplated is to be avoided, either to appoint many more Deputy Collectors at a time when the finances of the country ought not to be burthened for such a purpose, or to deprive them of their Police functions, and to appoint as Deputy Collectors the Deputy Magistrates who have been lately appointed with the sanction of Government, not for the purpose of trying Civil suits, but for the purpose of exercising Magisterial functions, and continually moving about in their districts in order to superintend and control the Police.

4*th*.—Because if the finances of the country were in a state to justify a large expenditure for the purpose of providing such a number of Deputy Collectors as this Bill will render necessary, I am of opinion that such expenditure ought not to be incurred so long as the Uncovenanted Judges of the Civil Courts are so greatly underpaid as they are universally admitted to be.

5*th*.—Because if any of the Deputy Magistrates, who have lately been appointed at a great expense, can consistently with the proper control of the Police be deprived of their Police functions, in order that they may be appointed Deputy Collectors, and in that capacity empowered to try the suits in question, they ought to be discontinued, and the expense of their salaries saved and devoted to the increasing of the pay of the Uncovenanted Civil Judges, and to the improvement of the Civil Courts of Judicature.

6*th*.—Because there is no sufficient guarantee that the Deputy Collectors are qualified to try the suits in question, none of them having undergone a judicial training or examination.

7*th*.—Because if the Bill to improve the law relating to sales of land for arrears of Revenue be passed, the Collectors and other Revenue Authorities will have a considerable increase of business thrown upon them by that Bill, which will render their time less available for the trial of Civil suits.

8*th*.—Because, entertaining the opinion that the Revenue authorities authorized to try suits under this Act are not at present sufficiently numerous for the proper discharge of the duty, I cannot blindly assent to oust the Civil Courts of their jurisdiction (even if I were otherwise disposed to do so) until

I know how many Revenue Courts are intended to be created to supply their place. Proceedings of the Legislative Council, dated the 23rd April 1859. Mr. Peacock's dissent.

9th.—Because Section XXXVIII of the Bill affects the stamp laws, and will, in my opinion, cause a considerable reduction in the revenue derived from the suits in question: whereas there is no reason for placing such suits in a more favorable position as regards stamp duty than other suits now cognizable only by the Civil Courts.

10th.—Because, although the rate of duty is decreased in respect of suits for a large amount, the stamp duties on many of the suits where the value is under sixteen rupees, is doubled by increasing the same from four annas to eight annas, which burden will in most cases fall upon the poorer classes of ryots who are the least able to bear it.

11th.—Because if the finances of the country were in a position to bear the loss, stamp duties on legal proceedings ought to be abolished; but the Government having lately declared that they could not afford to forego stamp duties in the Civil Courts, there is no reason why any of the suits provided for by this Bill should, where the value exceeds sixteen rupees, be specially favored by the reduction of the stamp duties thereon, at a probable loss of revenue of from a lakh to a lakh and a half, or two lakhs a year.

B. PEACOCK.

Mr. Grant moved the suspension of Standing Order No. XCI, in order to allow any other Member who wished to record his dissent to do so now.

Sir Charles Jackson seconded the motion, which was then put and agreed to.

Sir Charles Jackson delivered to the Clerk of the Council his dissent and his reasons of dissent from the passing of the Bill.

Sir Charles Jackson's dissent was then read by the Clerk as follows:—

I dissent— Sir Charles Jackson's dissent.

1st.—Because the Bill deprives the regular Civil Courts of the jurisdiction which they now have to try suits between landlord and tenant—suits which may involve difficult questions of law and fact—and invests the Revenue authorities with jurisdiction to try such suits.

2nd.—Because if it be true that the regular Courts have now too much to do, and the Revenue authorities have not enough business, then the number of Judges should be increased, and the Revenue authorities should be reduced in number.

3rd.—Because this Bill confounds the duties of one branch of the administration with the duties of another and independent branch thereof.

4th.—Because the provisions of this Act relating to the Officers before whom suits regarding rent are to be brought are founded on no principle, and are not shown to be grounded on convenience.

C. R. M. JACKSON.

Mr. Grant moved the suspension of the Standing Order No. XCI, in order to allow any Member, who now gave notice of his intention to record his assent, to do so before the rising of the next ordinary Meeting of the Council.

Sir Charles Jackson seconded the motion, which was then put and agreed to.

Messrs. Currie and Grant severally gave notice of their intention to record their assent to the Bill.

Abstract of Proceedings of the Legislative Council of India, dated 27th April 1859. Proceedings of the Legislative Council, dated the 27th April 1859.

Mr. Currie and Mr. Grant severally delivered to the Clerk of the Council, for the purpose of being recorded, their assents and their reasons of assent to the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal." Messrs. Currie and Grant.

The Clerk reported to the Council, that Mr. Ricketts and Mr. Harington had affixed their signatures to Mr. Currie's assent, stating that they assented for all the reasons specified therein.

Proceedings of the Legislative Council, dated the 27th April 1859.

THE VICE-PRESIDENT said that, as both the Honorable Members had signed the assent without having given due notice of their intention so to do, he apprehended that the additional signatures could not be recorded without a suspension of the Standing Orders.

MR. CURRIE said, his impression was that, when an assent was recorded after notice given, no notice was necessary to enable other Honorable Members to affix their signatures thereto. But he would submit for decision the point of order.

THE VICE-PRESIDENT said that the same rule was applicable to both cases, and that, under the Standing Orders, the assents of the Honorable Members could not be recorded. He would move, however, that the Standing Orders be suspended in order that the assents might be recorded.

MR. PEACOCK seconded the motion, which was carried.

MR. CRURIE'S assent was then read by the Clerk, as follows:—

MR. CURRIE'S assent.

I assent to the Bill and think that it ought to pass into law—

1st.—Because the Bill defines and settles several important questions connected with the relative rights of landholders and tenants, which have remained undefined and unsettled from the commencement of legislation in this Presidency, and of which a definition and settlement have been long considered to be eminently desirable and necessary.

2nd.—Because, instead of two classes of Courts deciding cases of the same description under different forms of procedure, and for one of which no rules of procedure have ever been prescribed by law, the Bill gives the original jurisdiction to one class of Courts, and provides for the guidance of those Courts a complete and simple Code of Procedure suitable to the cases to be tried by them.

3rd.—Because the class of Courts to which exclusive original jurisdiction is thus given is not only the best qualified to try cases between landlord and tenant, but is also that in which four-fifths or five-sixths of the cases which, under the existing law, might be brought indifferently in either class of Courts, are now actually instituted and disposed of.

4th.—Because, although it is true that under the general law the said Courts (namely, the Collectors and Deputy Collectors) have not jurisdiction in some of the several descriptions of cases enumerated in Section XXIII, yet it is in the power of the Executive Government to give them special jurisdiction in all those cases, and such jurisdiction has in fact been given to, and is now exercised by, the said Courts in all the Districts of the North-Western Provinces.

5th.—Because there is no reason to suppose that the Collectors and Deputy Collectors who have heretofore had the trial of rent suits, as stated under the third head of these reasons, will not be able to dispose of all cases brought before them under the provisions of this Bill.

6th.—Because, when the principle involved in the new Section, which was introduced by the Council into the Bill, is carried out (as it may be without any further legislation), and Officers exercising police functions are divested of all judicial powers, it will still be necessary that, in the large districts of the Lower Provinces, there should be sub-divisions in charge of Deputy Magistrates for the trial of criminal cases, which was indeed the main object for which sub-divisions were first constituted; and if such Deputy Magistrates are also Deputy Collectors, as they are at present, the local Courts, which in those Provinces are undoubtedly necessary to give the people the full benefit of the provisions of this Bill, will be supplied without additional expense; some portion of the Officers already authorized being made Deputy Superintendents of Police, and the remainder being invested with the charge of sub-divisions.

7th.—Because the persons appointed to the Office of Deputy Collector, or Deputy Magistrate and Deputy Collector, are carefully selected, are required to pass the examinations prescribed for Junior Civil Servants, and are never placed in charge of sub-divisions until reported qualified by the Commissioner; and there is, therefore, every reason to believe that the said Officers are and will be sufficiently qualified to discharge the duties entrusted to them by this Bill.

8th.—Because that, in so far as this Bill affects the revenue derived from stamps, the principle of allowing suits connected with demands and exactions of rent to be instituted on more favorable terms than other suits has already

been recognized, and is a part of the existing law; and whatever extension of the principle is authorized by this Bill, applies principally to those descriptions of suits which may be instituted by the tenant to obtain redress for acts of oppression committed by the landlord.

MR. CURRIE'S assent.

9th.—Because I believe that the loss of stamp duty, which has been brought forward as an objection to the passing of this Bill, has been very greatly over-rated, probably (although there are no certain data on which to institute a calculation) in the proportion of two or perhaps three to one; and because any such argument would apply equally to many other measures for reforming the administration of justice and especially to any measure for restricting the liberty of appeal.

10th.—Because the Bill greatly restricts, and at the same time imposes more effective checks on the power of distraint vested in landholders—a power which has been most grievously abused, and in respect of which remedial measures have been long and loudly called for.

11th and lastly.—Because the Bill collects into one comprehensive enactment, with large additions and extensive alterations, the whole of the existing law connected with the rent and occupancy of land—a law which is scattered through some twenty-five different enactments, extending over a period of more than sixty years.

E. CURRIE.

MR. HARINGTON'S assent.

I assent for all the foregoing reasons.

H. B. HARINGTON.

MR. RICKETTS' assent.

I assent for all the foregoing reasons.

H. RICKETTS.

MR. GRANT'S assent was also read by the Clerk as follows:—

MR. GRANT'S assent.

I assent—

Because, although I am of opinion that the provision in this Bill, whereby the original jurisdiction of the Civil Courts in cases between landlord and tenant is wholly taken away, is bad for many of the reasons which have been assigned in the dissents recorded, nevertheless I am convinced that the Bill, taken as a whole, is an excellent work and, if it becomes law, will be an inestimable benefit to the agricultural community; and I would not reject an extensive and great and unquestioned improvement in an entire department of the law, only because upon one point, regarding which a great difference of opinion exists, a principle is adopted which seems to my judgment unsound. Practically, the great majority of cases to which this principle applies will not be affected by the change of law now introduced; and if in the minority of cases the change is found by experience to produce important bad consequences, the provision I object to can always be easily altered by a very short enactment. Allowing full weight to the objection, so far as it is a practical objection, the advantages of this measure appear to me decidedly preponderating.

I might have come to a different conclusion, if I agreed in all the practical objections to the provision I disapprove of, which have been recorded, founded upon the convenience of parties and the requirements of public economy. But to these objections, so far as the convenience of parties is concerned, I do not think great weight is to be attached; and so far as public economy is concerned, I think no weight is to be attached.

On the worst possible supposition, namely, the incapacitation of all Deputy Magistrates, being also Deputy Collectors, for the trial of rent suits by reason of their being all vested with functions of Executive Police, still even in this case the great majority of the parties to such suits will have the very same Officers stationed at the very same places to resort to, after this Bill becomes law, that they do in fact now resort to. And effectively, it is not to be doubted that they will have many more, because it cannot be presumed that a district properly apportioned into sub-divisions, and adequately supplied over its whole extent with Deputy Magistrates, will require all or nearly all those Deputy Magistrates to be employed in the department of Executive Police. The true use of the greater number will be in the department of criminal justice, acting in which their presence throughout the district will remove the great opprobrium

Proceedings of the Legislative Council, dated the 27th April 1859.

Mr. Grant's assent.

of the old system, which is the want, not of local Police Officers, but of local Judges. The employment of these sub-divisional Criminal Judges, in their capacity of Deputy Collectors, also in the trial of the classes of civil suits to which this Bill relates, will be entirely proper in itself, and entirely consistent with the objects of their appointment. And though I wish that the Moonsiffs' Courts also had been left open to this class of suitors, yet, as in fact the Moonsiffs' Courts try now only a small minority of these cases, I cannot deny that, when the arrangements in prospect are completed, the practical effect of this Bill will be to bring the trials nearer than they are at present to the doors of most of the parties and most of the witnesses concerned.

Nor will the reservation of some Deputy Magistrates for the peculiar functions of Executive Police, to be exercised over the Police Darogahs and under the Magistrates, involve the necessity of employing more of them on the whole than would otherwise be required, because in any way all will have full employment in one sort of business or another. Where the business of all sorts to be done remains the same, no increase of workmen is required, by reason of a division of labor, arranged upon sound principles, and giving full occupation to every workman engaged.

J. P. GRANT.

Proceedings of the Legislative Council, dated the 30th April 1859.

Abstract of Proceedings of the Legislative Council of India, dated 30th April, 1859.

Lord Canning's assent.

The President read a Message from the Governor-General, giving his assent to the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal," and communicating the following remarks:—

"I have this day given my assent to a Bill to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal.

"As several assents and dissents have been recorded upon the passing of this Bill, I deem it respectful to the Legislative Council to state the reasons for which I assent to it.

"I believe that the Bill will confer a great practical benefit upon the agricultural population of Bengal.

"I find that the Bill is objected to, not on account of the substantial alterations of the law which it effects between Landlord and Tenant, but because it gives the original jurisdiction, in cases arising between Landlord and Tenant, to the Courts of the Revenue Officers, and takes away original jurisdiction from the regular Courts of Civil Judicature, and I find that this objection rests chiefly upon two grounds:

"*1st.*—That the number of Revenue Officers whom it will be practicable to invest with powers under the Bill will be so small that parties, and their witnesses, will be compelled to travel greater distances to obtain justice than would be necessary if the Civil Courts were allowed to retain jurisdiction in such cases.

"*2nd.*—That there is not a sufficient security that the Deputy Collectors will be qualified to try the suits in question.

"In regard to the first ground, it is by no means certain that the apprehension expressed will prove to be well founded; but were it otherwise, it would not, in my opinion, constitute a sufficient reason for throwing back wholly and for an indefinite time the operation of a measure, the substantial provisions of which will confer, in other respects, a sensible benefit upon a vast community.

"In regard to the second ground, I am satisfied that, as a class, Deputy Collectors are, by general education, by training, and by examination, quite as well qualified to try cases which arise between Landlord and Tenant as the persons who for the most part preside over the lowest class of Civil Courts in Bengal.

"Lastly, I have to observe, that no one doubts that it has long been desirable that the important questions connected with the relative rights of Landlord and Tenant dealt with in this Bill should be settled: that no objection is suggested to the nature of the settlement which the Bill contemplates; and that the Bill is a real and earnest endeavor to improve the position of the ryots of Bengal, and to open to them a prospect of freedom and independence which

they have not hitherto enjoyed, by clearly defining their rights and by placing restrictions on the power of the zemindars, such as ought long since to have been provided.

"This being so, I think that the Bill ought to pass into law, and that defects of machinery or procedure, if any should be found to exist, should be left to be remedied hereafter by a supplementary enactment.

LORD CANNING'S assent.

"For these reasons I have given my assent to the Bill, and I beg leave to add the expression of my opinion, that the author of the measure, Mr. Currie, has established a lasting claim to the gratitude of the cultivators of the soil in Bengal, and to the acknowledgments of all who are interested in their well-being.

"CANNING."

"*The 29th April 1859.*

MR. GRANT moved that this Message, with the dissents and assents which had been recorded, be printed.

Agreed to.

Government of India Central Printing Office.—No. 212 R. & A.—31-3-83.—1,000.